TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~534.~~ ~~286~~ 83

GEORGE H. REA AND EDWARD D. JONES, PLAINTIFFS IN ERROR,

vs.

THE STATE OF MISSOURI, EX REL. AND TO THE USE OF WILLIAM HAYES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

FILED DECEMBER 14, 1871.

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1 UNITED STATES OF AMERICA,
Districts of Missouri, sct:

Pleas before the honorable the circuit court of the United States for the districts of Missouri, October term, 1871.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes,
vs.
GEORGE H. REA AND EDWARD D. JONES.

Be it remembered that, on the 13th day of January, A. D. eighteen hundred and seventy, there was filed in the circuit court of the United States for the districts of Missouri a declaration in the above-entitled case, which declaration is in the words and figures following, to wit:

Declaration.

In the circuit court of the United States for the districts of Missouri.
Districts of Missouri, ss. April term, 1870.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes,
vs.
GEORGE H. REA & EDWARD D. JONES.

The State of Missouri in the relation and to the use of William Hayes, who is a citizen of the State of Kansas, plaintiff, complains of George H. Rea and E. D. Jones, who are citizens of the State of Missouri,
2 defendants, of a plea that they render unto plaintiff the sum of fifty thousand dollars, which they owe and unjustly detain from plaintiff. For that whereas heretofore, to wit, on the 2nd day of September, A. D. 1869, and at the time of the seizure and sale hereinafter mentioned, at the districts of Missouri aforesaid, the said William Hayes was the owner of, and lawfully possessed as of his own property, of the following described property, to wit: 76 bolts of flannel, 16 bolts plaid linsey, 3 bolts satin, 72 Balmoral skirts, 18 felt skirts, 66 bolts delaine, 32 bolts towelling, 28 bolts twill, 210 bolts sheeting, 24 seamless sacks, 31 white woolen blankets, 100 gray blankets, 2 bolts counterpanes, 7 bolts wiggins, 55 bolts calico, 10 bolts denims, 25 bolts drilling, 39 bolts hickory shirting, 158 bolts muslin, 23 bolts jeans, 19 bolts satinet, 26 bolts summer and woolen cassimeres, 2 bolts woolen sheeting, 4 bolts canvass, 2 bolts cloth, 6 bolts lining, 30 bolts gingham, 16 bolts lane, 21 bolts poplin, 1 bolt tweed, 16 bolts alpacas, 2 bolts of merino, 1 bolt linen, 18 bolts ticking, 25 bolts cambric, 12 bolts Canton flannel, 114 bolts calico, 90 bolts sheeting, 8 bolts ticking, 10 bolts denims, 1 case tobacco, 1 package (3 quarter caddies) tobacco, 1 package (2 boxes) pepper, 1 package (2 boxes) ginger, 1 package (2 boxes) umbrellas, 4 barrels syrup, 7 barrels sugar, 1 sack pepper, 38 boxes boots and shoes, 2 bags of rice, 1 package (2 boxes) pipes, 2 boxes groceries (tobacco,) 2 half boxes tobacco, 4 rolls carpet, 27 cases hats, shawls, coats, socks, hose, gloves, shirts, valises, & fancy goods and 12 trunks containing hats, of great value, to wit, of the value of twenty-five thousand dollars.

That, afterwards, to wit, on the said second day of September, 1869, at the county of St. Louis, to wit, at the districts of Missouri
3 aforesaid, The First National Bank of Washington City commenced a suit by attachment against one Perry Fuller in the cir-

cuit court of said county of St. Louis, and that, on the day and year last aforesaid, at the districts of Missouri aforesaid, the said First National Bank of Washington City sued out of the office of the clerk of the circuit court of said county of St. Louis a writ of attachment in said suit, being No. 524, returnable to the October term, 1869, of said court against said Fuller, directed to the sheriff of the county of St. Louis aforesaid, commanding him to attach the said Fuller by all and singular his lands and tenements, goods, chattels, moneys, credits, and effects, or so much thereof as should be sufficient to secure the sum of $10,104 66, with interest and costs; that, on the day and year, and at the place last aforesaid, the said sheriff, one John McNeil, being then and there such sheriff, executed the said writ of attachment at the request of said First National Bank by seizing, levying upon, and taking, under and by virtue of said writ, as the property of the said Perry Fuller, the property hereinbefore described, and more particularly described in the schedule marked A, hereto attached, and made part hereof; that, after said sheriff had seized, levied upon, and taken said property as aforesaid, to wit, on the 16 day of September, 1869, at the districts of Missouri aforesaid, the said William Hayes made his written claim to said property according to the statute of the State of Missouri in such case made and provided, to wit, an act entitled "An act concerning the duties of sheriff and marshal in the county of St. Louis in relation to the levy and sale of such property under execution or attachment as may be claimed by
4 third persons," approved March 3, 1855, which said claim was duly verified by his (said Hayes') affidavit, therein describing said property, to wit, the property aforesaid, and stating his interest therein, to wit, that the said interest was full and entire; that he owned the whole of said property absolutely, and was in good faith the lawful owner of the interest claimed by him in said property; that said Perry Fuller, defendant in said attachment suit, had no right or title, directly or indirectly, in the interest in said property claimed by said Hayes; that said Hayes' claim was not made in collusion with defendant Fuller for the purpose of vexing, hindering, or delaying the plaintiff in said suit, First National Bank, in obtaining its just rights, and that the said property was of the value of twenty-five thousand dollars; that thereupon, afterwards, to wit, on the 20th day of September, A. D. 1869, at the districts of Missouri aforesaid, the said First National Bank of Washington City, as principal, and the said defendants George H. Rea and Edward D. Jones, as sureties, executed and delivered to the State of Missouri their certain writing obligatory, sealed with their seals, and signed and sealed by the said First National Bank, by Enos Clark, its attorney-in-fact, by the name, style, and abbreviation of "First National Bank of Washington, D. C., by Enos Clark, att'y-in-fact," and signed and sealed by the said George H. Rea by the name, style, and abbreviation of "Geo. H. Rea," and signed and sealed by the said Edward D. Jones by the name and style and abbreviation of E. D. Jones, which said writing obligatory is now here to the court shown, the date whereof is, to
5 wit, the day and year last aforesaid, and thereby the said First National Bank of Washington City, and the said defendants, acknowledged themselves to be held and firmly bound unto the State of Missouri in the sum of fifty thousand dollars; to the payment whereof, well and truly to be made, they, the said First National Bank and the said defendants thereby bound themselves, their heirs, executors, and administrators, jointly and severally, which said writing obligatory was and is subject to certain conditions thereunder written, whereby, after

reciting to the effect following, to wit, that whereas a writ of attachment had issued from the clerk's office of the circuit court of St. Louis County, being No. 524, returnable to the October term, 1869, of said court, in favor of First National Bank of Washington City against Perry Fuller, directed to the sheriff of the county of St. Louis, and had been delivered to John McNeil, as such sheriff, to be executed by him, and that the said John McNeil had executed the said writ at the request of the said plaintiff by taking, as the property of the said Perry Fuller, the personal property mentioned therein, being the same hereinbefore described, and more particularly described in the schedule aforesaid; that said William Hayes had claimed said property according to the third section of the act of the general assembly of the State of Missouri entitled An act concerning the duties of the sheriff and marshal in the county of St. Louis in relation to the levy and sale of such property under execution or attachment as may be claimed by third persons, approved March 3, 1865, and in the manner therein mentioned. It was conditioned in the words and forms following, to wit: "Now if
6 the aforesaid plaintiff shall indemnify said John McNeil, sheriff, against all damages and costs which he (said John McNeil) may sustain in consequence of *the* such seizure and sale of the property aforesaid under said writ, and, moreover, shall pay to and satisfy said claimant and any person or persons claiming title to said property, all damages which such person or persons may sustain in consequence of such seizure and sale, then this obligation shall be null and void; otherwise it shall remain in full force and virtue." Which said writing obligatory was approved by the said John McNeil, sheriff as aforesaid, by Wengel Holy, deputy sheriff of the county of St. Louis aforesaid, to wit, on the day and year first aforesaid, at the districts of Missouri aforesaid.

And the said plaintiff avers that, afterwards, to wit, on the 28th day of September, 1869, and on the 19th day of October, 1869, at the districts aforesaid, the said sheriff sold said property to divers persons, whereby and by reason of the said seizure and sale, the same became and was and is wholly lost to said Hayes, and plaintiff says the said Hayes has sustained damages by reason of such seizure and sale of his said property to a large amount, to wit, to the amount of thirty-five thousand dollars, yet neither the said First National Bank nor the said defendants, nor has either of them, paid and satisfied the said Hayes the damage sustained by him as aforesaid in consequence of such seizure and sale of said property, or any part thereof, by reason of which said breaches the said writing obligatory became forfeited, and ac-
7 cording to the statute, an action hath accrued to the said plaintiff to demand and have of and from the said defendants the said sum of fifty thousand dollars above demanded; yet the said defendants, although often requested to do so, have not as yet paid the said sum of money above demanded, or any part thereof, to the said plaintiff, but to pay the same have hitherto wholly refused, and still do refuse, to the damage of said plaintiff of fifty thousand dollars. Wherefore plaintiff brings suit.

EWING & HOLLIDAY,
Attorneys for Pl'ff.

And said Schedule A, attached to, and forming part of, said declaration is in the words and figures following, to wit:

Schedule "A."

CASE 10.

10 pieces Malb'ro stripes .....
1 " Pittston do. .....
7 " Sheridan do. .....
10 " superior drilling .....
2 " Otis A. X. A. denims .....
2 " Warner B. do. .....
1 " Marlb'ro do. .....

Total value of case 10 .....

CASE 11.

13 pieces Canton flannel, ass'd .....
15 " blue drilling .....
4 " denims " .....

Total value of case 11 .....

8 CASE 12.

18 pieces denims and ticks, ass'd .....

Total value of case 12 .....

CASE 13.

17 pieces denims and ticks, ass'd .....

Total value of case 13 .....

CASE 14.

45 pieces bleached sheeting, ass'd .....

Total value of case 14 .....

CASE 15.

29 pieces bleech'd domestic, ass'd .....

Total value of case 15 .....

CASE 16.

24 pieces bleech'd domestic, ass'd .....

Total value of case 16 .....

CASE 17.

32 pieces bleech'd domestic, ass'd .....

Total value of case 17 .....

CASE 18.

29 pieces bleech'd domestic, ass'd .....

Total value of case 18 .....

CASE 19.

69 pieces crash, ass'd .....

Total value of case 19 .....

3 cases Arnold prints, (2037, 1949, 1756).....

Total value of cases .....

3 bales sheeting, (5254, 5236, 5251).....

Total value of bales .....

9 3 bales Wellington sheeting, (850, 1042, 1049) .....

Total value of bales .....

2 bales Waverly sheeting, (77, 76) .....

Total value of bales .....

4 bales Gilboa domestic, (875, 876, 877, 880).....

Total value of bales .....

1 bale black and grey blankets, (4618) .....
1 bale blankets, ass'd, (20) .....

Total value of bale' .....

CASE 21.

54 pieces dress goods, ass'd .....

Total value of case 21 .....

CASE 22.

17 pieces gingham, ass'd .....
10 pieces mohair, " .....
24 pieces col. cambric " .....

Total value of case 22 .....

CASE 23.

30 pieces cambric, ass'd.....
13 pieces gingham, " .....
16 pieces delaine, " .....
1½ dozen Bal. skirts, " .....

Total value of case 23 .....

CASE 24.

19 pieces apron checks, ass'd .....
3 pieces wigans .....

Total value of case 24 .....

CASE 25.

10 4 pieces wigans, ass'd .....
2 pieces diaper, " .....
22 pieces jeans, " .....
8 pair white blankets, " .....

Total value of case 25 .....

CASE 30.

23 pair' white blankets, ass'd .....

Total value of case 30 .....

4 rolls carpeting, (40, 41, 42, 43) .....

Total value of rolls .....

CASE 44.

83 militia coats .....

Total value of case 44 .....

CASE 26.

1 p's bro. Holland .....
42 " poplin and alpaca, ass'd .....
2 " French merino, " .....
4 doz. Bal. skirts " .....

Total value of case 26 .....

CASE 27.

3 p's farmers' satin, ass'd .....
2 doz. Bal. skirts, " .....
7 p's opera flannel, " .....
15 " linsey, " .....
1 " cottonade, " .....

Total value of case 27 .....

CASE 28.

25 p's flannel, ass'd .....

Total value of case 28 .....

11 CASE 29.

22 p's flannel, ass'd.....
4 " canvass, " .....

Total value of case 29 .....

1 bale red flannel, (568).....

Total value of bale.....

CASE 31.

12 p's flannel, ass'd .....
1 " tweed .....
1 " jeans.....

Total value of case 31 .....

CASE 32.

20 p's cloth, jeans, and cassimere, ass'd.....

Total value of case 32 .....

CASE 33.

19 p's jeans and sattinetts, ass'd .....

Total value of case 33 .....

CASE 34.

14 p's cloth and jeans, ass'd .....

Total value of case 34 .....

CASE 35.

16 p's sattinetts and jeans, ass'd .....

Total value of case 35 .....

CASE 40.

15 p's jeans and flannel.....

Total value of case 40 .....

CASE 45.

15 p'r' blankets, ass'd.....
12 266 shawls, ass'd .....
8 1/2 doz. comforts, " .....

Total value of case 45 .....

CASE 46.

30½	doz. shirts, ass'd	
4¾	" overalls, "	
16	" socks, "	
30	" h'dk'fs, "	
1	" comforts, "	
1	" jackets, "	

Total value of case 46 .....

CASE 47.

35½	doz. shirts and drawers, ass'd	
10	" h'dk'fs, "	
33	" hose, "	
8	" scarfs, "	

Total value of case 47 .....

CASE 48.

9	p's Denmark, ass'd	
12	doz. toweling, "	
6	" h'dk'fs, "	
12	" napkins, "	
3	p's B. lawn, "	
9	" check, "	
7	" jaconet, "	
28	" Union cloth, "	
10	" diaper, "	
	2 doz. do. "	
13	5 hoop skirts, ass'd	

Total value of case 48 .....

CASE 49.

11	doz. corsetts, ass'd	
105	" collars and cuffs, "	
8	p's diaper, "	
24	doz. h'dk'fs, "	
34⅐	p's pongeé and serge, "	
3	" Scotch lawn, "	

Total value of case 49 .....

CASE 50.

9	boxes yarn, ass'd	
35	" cuffs and collars, "	
16½	doz. hose, "	
23¼	" ties & bows, "	
30 5/12	" gloves, "	
2	p's India twill "	
15	" diaper, "	
27	doz. hand'fs, "	

Total value of case 50 .....

CASE 51.

50 doz. hose and socks, ass'd.....
6 p's sattinetts and jeans, " .....
29 doz. collars, " .....
2 p's India twill, " .....
1 " brilliant, " .....
2 " berege, " .....
9 " Irish linen, " .....

Total value of case 51 .....

14 CASES 53, 54, & 55.

377 doz. spool cotton, ass'd.....
4 gr't gross hooks & eyes, " .....
22 lbs. thread, " .....
10 p'k'g's pins, " .....
19 gross binding, " .....
4 doz. corset clasps, " .....
12 M envelopes, " .....
39 r'ms paper, " .....
87 books, " .....
3 gross penholders, " .....
16 " pens, " .....
21½ doz. pencils, " .....
96½ " skirt braid, " .....
5 " suspenders, " .....
2743/4 gross buttons, " .....
7 M needles, " .....
48 doz. do. " .....
3 " watch-keys, " .....
19 " thimbles, " .....
22 bundles hair pins, " .....
1 M button-rings, " .....
1 doz. key-rings, " .....
1 " tweesers, " .....
2 lbs. silk, " .....
21 doz. hair-netts, " .....
37 " stay-binding, " .....
20 p's belting, " .....
15 62½ doz. spool silk, ass'd.....
6½ " garters, " .....
2 gross elastic cord, " .....
12 bundles whalebones, " .....
39 doz. combs, " .....
26 p's tatting, " .....
18 " elastic webb, " .....
4 doz. bottles oil, " .....
41 boxes soap, " .....
12½ doz. brushes, " .....
3½ " pocket-books, " .....
8½ " ink, " .....
2 " lather boxes, " .....

Total value cases 53, 55, 55 .....

38 cases boots and shoes, ass'd .....

Total value of cases .....

21 cases and 12 trunks, containing 113 doz. hats and caps, ass'd, 24 11/12 doz. gloves, ass'd, 1½ doz. satchels, 1 doz. leather pelts, 1½ doz. velieces, 1 doz. Gothic bags, 2 doz. umbrillas, and 12 trunks .....

Total value of cases and trunks .....

1 case tobacco; 3 boxes tobacco; 2 boxes pipes; 2 cases ginger; 4 bbls. syrup; 1 sack pepper; 7 bbls. sugar; 2 bags rice; 2 boxes pipes; 2 boxes groceries; 2 half boxes tobacco .....

Total of above articles .....

16 And on said thirteenth day of January, A. D. eighteen hundred and seventy-three, was issued out of the clerk's office of said circuit court a summons in this case; which summons is in the words and figures following, to wit:

Summons.

MISSOURI DISTRICTS, *sct:*

The President of the United States of America to the marshal of the eastern district of Missouri, greeting:

You are hereby commanded to summon George H. Rea and Edward D. Jones, citizens of the State of Missouri, that they be and appear before the honorable circuit court of the United States for the districts of Missouri, on the first day of the next term thereof to be holden at the city of St. Louis, in and for said districts, on the first Monday of April next, then and there to answer unto the State of Missouri in the relation and to the use of William Hayes, citizen of the State of Kansas, in a plea of debt, to the damage of said plaintiff of fifty thousand dollars. Hereof fail not, and have you then and there this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, the thirteenth day of January, A. D. eighteen hundred and seventy.

Issued at office, in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] BEN. F. HICKMAN, *Clerk.*

And said summons was returned into said circuit court by said marshal, together with his return of his proceedings thereon, and said return of said marshal is in the words and figures following, to wit:

17 *Marshal's return on summons.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Executed this writ by reading the within summons together with the copy of declaration thereto attached to the within-named Edward D. Jones, at St. Louis, in said district, January 14, 1870, and to the

within-named George H. Rea, at St. Louis, in said district, January 22, 1870.

C. A. NEWCOMB,
U. S. Marshal E. Dist. of Mo.
By J. SAUER, *Deputy.*

And at a regular stated term of said circuit court begun and holden at the city of St. Louis, in said districts, on the first Monday, the 4th day of April, in the year of our Lord eighteen hundred and seventy, the following proceedings were had in said case on Saturday, the 9th day of April, in said year, to wit:

Amended declaration filed in accordance with stipulation; also, plea to amended declaration filed.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes, plaintiff, *ag'st* GEORGE H. REA ET AL., DEFENDANTS. } Debt.

This day come the parties, by attorneys, and file a stipulation in writing signed by the attorneys for defendants, allowing plaintiff to file an amended declaration herein; and, in accordance with such stipulation, plaintiff files amended declaration in this case. And said defendants file their plea of nil debet to the action brought by plaintiff herein.

And said stipulation in writing filed as aforesaid, is in the words and figures following, to wit:

Stipulation.

In circuit court, U. S. dist's of Mo.

WILLIAM HAYES *vs.* GEORGE H. REA & E. D. JONES

18 It is hereby stipulated & agreed that the above-named plaintiff may file amended declaration in above case.

St. Louis, Mo., Apr. 9, 1870.

CLARK & MADILL,
Att'ys for Def'ts.

And on said 9th day of April, in said last-mentioned year, said amended declaration was filed in the clerk's office of said circuit court, and is in the words and figures following, to wit:

Amended declaration.

In the circuit court of the United States for the districts of Missouri.
Districts of Missouri, ss. April term, 1870.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes, *vs.* GEORGE H. REA & EDWARD D. JONES.

The State of Missouri in relation and to the use of William Hayes,

who is a citizen of the State of Kansas, plaintiff, in this, its amended declaration, complains of George H. Rea and Edward D. Jones, who are citizens of the State of Missouri, defendants, of a plea that they render unto plaintiff, the sum of fifty thousand dollars which they owe and unjustly detain from plaintiff. For that whereas, heretofore, to wit, on the second day of September, A. D. 1869, and at the time of the seizure and sale hereinafter mentioned, at the districts of Missouri aforesaid, the said William Hayes was the owner of, and lawfully possessed as of his own property of, the following described property, to wit: 76 bolts of flannel, 16 bolts plaid linsey, 3 bolts satin, 72 Balmoral skirts, 18 felt skirts, 66 bolts delaine, 32 bolts toweling, 28 bolts twill, 210 bolts sheeting, 24 seamless sacks, 31 white woolen blankets, 100 gray blankets, 2 bolts counterpanes, 7 bolts wiggins, 55 bolts
19 calico, 10 bolts denim, 25 bolts drilling, 39 bolts hickory sheeting, 158 bolts muslin, 23 bolts jeans, 19 bolts satinet, 26 bolts summer and woolen cassimeres, 2 bolts woolen sheeting, 4 bolts canvas, 2 bolts cloth, 6 bolts lining, 30 bolts gingham, 16 bolts lawn, 21 bolts poplin, 1 bolt tweed, 16 bolts alpacas, 2 bolts of merino, 1 bolt linen, 18 bolts ticking, 25 bolts cambric, 12 bolts Canton flannel, 114 bolts calico, 90 bolts sheeting, 8 bolts ticking, 10 bolts denim, 1 case tobacco, 1 package (3 quarter caddies) tobacco, 1 package (2 boxes) pepper, 1 package (2 boxes) ginger, 1 package, (2 boxes) umbrellas, 4 barrels syrup, 7 barrels sugar, 1 sack pepper, 38 boxes boots and shoes, 2 bags of rice, 1 packages (2 boxes) pipes, 2 boxes groceries, (tobacco,) 2 half box's tobacco, 4 rolls carpet, 27 cases hats, shawls, coats, socks, hose, gloves, shirts, valises, & fancy goods, and 12 trunks, containing hats, of great value, to-wit, of the value of twenty-five thousand dollars.

That, afterwards, to wit, on the said second day of September, 1869, at the county of St. Louis, to wit, at the districts of Missouri aforesaid, the First National Bank of Washington City commenced a suit by attachment against one Perry Fuller, in the circuit court of said county of St. Louis, and that, on the day and year last aforesaid, at the districts of Missouri aforesaid, the said First National Bank of Washington City, sued out of the office of the clerk of the circuit court of said county of St. Louis, a writ of attachment in said suit, being No. 524, returnable to the October term, 1869, of said court, against said Fuller, directed to the sheriff of the county of St. Louis aforesaid, com-
20 manding him to attach the said Fuller, by all and singular his lands and tenements, goods, chattels, moneys, credits, and effects, or so much thereof as shall be sufficient to secure the sum of $10,104 66, with interest and costs; that, on the day and year and at the place last aforesaid, the said sheriff, one John McNeil, being then and there such sheriff, executed the said writ of attachment at the request of said First National Bank by seizing, levying upon, and taking under and by virtue of said writ, as the property of the said Perry Fuller, the property hereinbefore described, and more particularly described in the schedule, marked A, hereto attached and made part hereof; that said seizure was made by said sheriff while said property and goods were in transit from the city of New York to the town of Ottawa, in the State of Kansas aforesaid, the place of their consignment, to wit, at the districts aforesaid. That after said sheriff had seized, levied upon, and taken said property as aforesaid, to wit, on the 16th day of September, 1869, at the districts of Missouri aforesaid, the said William Hayes made his written claim to said property according to the statute of the State of Missouri in such case made and provided, to wit, an act entitled "An act concerning the duties of sheriff and marshall in

the county of St. Louis in relation to the levy and sale of such property under execution or attachment as may be claimed by third persons," approved March 3, 1855, which said claim was duly verified by his, said Hayes' affidavit therein, describing said property, to wit, the property aforesaid, and stating his interest therein, to wit, that the said interest was full and entire; that he owned the whole of said
21 property absolutely, and was in good faith the lawful owner of the interest claimed by him in said property; that said Perry Fuller, defendant in said attachment suit, had no right or title, directly or indirectly, in the interest in said property claimed by said Hayes; that said Hayes' claim was not made in collusion with defendant Fuller, for the purpose of vexing, hindering, or delaying the plaintiff in said suit, First National Bank in obtaining its just rights, and that the said property was of the value of twenty-five thousand dollars. That thereupon, afterwards, to wit, on the 20th day of September, A. D. 1869, at the districts of Missouri aforesaid, the said First National Bank of Washington City, as principal, and the said defendants, George H. Rea and Edward D. Jones, as sureties, executed and delivered to the State of Missouri, their certain writing obligatory, sealed with their seals, and signed and sealed by the said First National Bank, by one Enos Clark, its attorney-in-fact, by the name, style, and abbreviation of "First National Bank of Washington, D. C., by Enos Clark, att'y-in-fact," and signed and sealed by the said George H. Rea, by the name, style, and abbreviation of "Geo. H. Rea," and signed and sealed by the said Edward D. Jones, by the name and style, and abbreviation of "E. D. Jones," which said writing obligatory is now here to the court shown, the date whereof is, to wit, the day and year last-aforesaid, and thereby the said First National Bank of Washington City, and the said defendants acknowledged themselves to be held and firmly bound unto the State of Missouri, in the sum of fifty thousand dollars; to the
22 payment whereof, well and truly to be made, they, the said First National Bank, and the said defendants thereby bound themselves, their heirs, executors, and administrators, jointly and severally, which said writing-obligatory was and is subject to certain conditions thereunder written, whereby, after reciting to the effect following, to wit, that, whereas, a writ of attachment had issued from the clerk's office of the circuit court of St. Louis County, being No. 524, returnable to the October term, 1869, of said court, in favor of First National Bank of Washington City against Perry Fuller, directed to the sheriff of the county of St. Louis, and had been delivered to John McNeil as such sheriff, to be executed by him, and that the said John McNeil had executed the said writ at the request of the said plaintiff, by taking as the property of the said Perry Fuller, the personal property mentioned therein, being the same hereinbefore described, and more particularly described in the schedule aforesaid; that said William Hayes had claimed said property according to the third section of the act of the general assembly of the State of Missouri, entitled An act concerning the duties of the sheriff and marshall in the county of St. Louis, in relation to the levy and sale of such property under execution or attachment as may be claimed by third persons, approved March 3, 1855, and in the manner therein mentioned, it was conditioned in the words and figures following, to wit: "Now, if the aforesaid plaintiff shall indemnify said John McNeill, sheriff, against all damages and costs, which he, said John McNeill, may sustain in consequence of the such seizure and sale of the property aforesaid under said writ,

23 and moreover shall pay to and satisfy said claimant and any person or persons claiming title to said property, all damages which such person or persons may sustain, in consequence of such seizure and sales, then this obligation shall be null and void; otherwise it shall remain in full force and virtue;" which said writing obligatory was approved by the said John McNeil, sheriff, as aforesaid, by Wengel Holy, deputy sheriff of the county of St. Louis aforesaid, to wit, on the day and year first aforesaid at the districts of Missouri aforesaid.

And the said plaintiff avers that, afterwards, to wit, on the 28th day of September, 1869, and on the 19th day of October, 1869, at the districts aforesaid, the said sheriff sold said property to divers persons, whereby and by reason of the said seizure and sale the same became, and was, and is wholly lost to said Hayes; that said Fuller was not the owner of, and had no title or interest in, said property, and the seizure and sale thereof, as aforesaid, were wrongful, to wit, at the districts aforesaid. And plaintiff says the said Hayes has sustained damages by reason of such seizure and sale of his said property to a large amount, to wit, to the amount of thirty-five thousand dollars. And also, by means of the premises the said Hays was obliged to, and did necessarily pay, and has become liable to pay a large sum of money, to wit, the sum of five thousand dollars, lawful money, in and about making claim to his said property as aforesaid, and in endeavors to procure the discharge & recover the possession thereof after its seizure as aforesaid, to wit, at the districts aforesaid. And also, by means of the premises the
24 said Hayes has been put to great expense, and is liable for a large sum of money, to wit, the sum of two thousand dollars, to divers persons employed by him as salesmen, by the year, prior to said seizure, to wit, at the districts aforesaid. And also, by means of the premises said Hayes has sustained great loss, amounting to a large sum, to wit, the sum of eight thousand dollars, in the injury done to his business and to his credit, and in the diminution of the profits of his trade during the existence of, and since the seizure and sale aforesaid, to wit, at the districts aforesaid.

Yet, neither the said First National Bank, nor the said defendants, nor has either of them, paid and satisfied the said Hayes the damage sustained by him as aforesaid in consequence of such seizure and sale of said property, or any part thereof, by reason of which said breaches the said writing obligatory became forfeited, and, according to the statute, an action hath accrued to the said plaintiff to demand and have of and from the said defendants the said sum of fifty thousand dollars above demanded. Yet the said defendants, although often requested to do so, have not as yet paid the said sum of money above demanded, or any part thereof, to the said plaintiff, but to pay the same have hitherto wholly refused, and still do refuse, to the damage of said plaintiff of fifty thousand dollars. Wherefore plaintiff brings suit.

NELSON, EWING & HOLLIDAY.
Attorneys for Pl'ff.

And said plea filed by the defendants in this case, as aforesaid, on the 9th day of April, A. D. 1870, is in the words and figures
25 following, to wit:

Plea.

In circuit court of the United States for the districts of Missouri.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes, plaintiff,
vs.
GEORGE H. REA AND EDWARD D. JONES, defendants.

And now, by their attorneys, come the said defendants and defend the wrong and injury, when, &c., and say that they do not owe the said sum of money demanded by the said plaintiff in his declaration filed in this cause, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them; and of this the said defendants put themselves upon the country.

CLARKE & MADILL & DILLON,
Attorneys for Defendants.

And afterwards, to wit, at a regular stated term of said circuit court, begun and holden at the city of Saint Louis, in said eastern district, on Monday, the 3rd day of October, A. D. 1870, the following further proceedings were had in said case, on said day, to wit:

Plea of nil debet filed.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes, plaintiff,
ag'st
GEORGE H. REA ET AL., DEFENDANTS. } Debt.

This day come the defendants, by attorney, and, in accordance with the consent in writing of plaintiff's attorneys this day filed, file
26 their plea of nil debet to the amended declaration of plaintiff herein against them.

And said consent in writing filed in this case, as aforesaid, is in the words and figures following, to wit:

Consent in writing.

In the circuit court of the United States for the districts of Missouri.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes,
vs.
EDWARD D. JONES & GEORGE H. REA.

We hereby agree that defendants may file a plea to amended declaration filed in the above-entitled action.

St. Louis, Mo., Sept. 30, 1870.

EWING & HOLLIDAY,
Attorneys for Plaintiff.

And on said 3rd day of October, in said year, said plea to amended declaration was filed in the clerk's office of said circuit court, and is in the words and figures following, to wit:

Plea to amended declaration.

In the circuit court of the United States for the districts of Missouri.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes, plaintiff,
vs.
GEORGE H. REA AND EDWARD D. JONES, defendants.

And now come the said defendants, by their attorneys, Clarke & Dillon, and for plea to the amended declaration herein filed defend the wrong and injury, when, &c., and say that they do not owe the said sum of fifty thousand dollars above demanded, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them, and of this the said defendants put themselves upon the
27 country.

CLARKE & DILLON,
Attorneys for Defendants.

And the said plaintiff doth the like.

SHARP & BROADHEAD,
Att'ys for Pl'ff.

And afterwards, to wit, at a regular stated term of said circuit court, begun and holden at the city of Saint Louis, in said eastern district, the following further proceedings were had in said case on the first Monday, the 2nd day of October, A. D. 1871, to wit:

Case called for trial.—Jury sworn.—Hearing commenced.

THE STATE OF MISSOURI, IN RELATION AND TO the use of William Hayes, plaintiff,
vs.
GEORGE H. REA ET AL., DEFENDANTS. } Debt.

This day come the parties herein, by their respective attorneys: the plaintiff, by Messrs. Nelson and Holiday, Sharp and Broadhead, and Daniel W. Voorhees, esquire; and the defendants, by Messrs. Clarke and Dillon, and Messrs. Henderson and Hayden; and this case being regularly called for trial, and both parties being ready, it is ordered that a jury come.

And thereupon comes said jury, to wit, John Reed, Charles Hume, John H. Fox, James M. Brawner, George W. King, Milo Yarbrough, Vincent Cissel, George Towell, Silas Hall, Herman F. Mons, Charles E. Kearney, and Abraham Meyer, twelve good and lawful men, who were sworn, well and truly to try the issues joined herein.

And thereupon the hearing of said case commenced, and said case was in part heard, and the hearing thereof not being concluded at the
28 hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, to wit, at said regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Tuesday, the 3rd day of October, A. D. 1871.

Case further heard.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes, plaintiff, *vs.* GEORGE H. REA ET AL., DEFENDANTS. } Debt.

This day come the parties, by their respective attorneys, as on yesterday, and the jury sworn herein being also present, the hearing of this case was resumed, and the same was further heard, and the hearing thereof not being concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, to wit, at said regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Wednesday, the 4th day of October, A. D. 1871.

Case further heard.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes, plaintiff, *vs.* GEORGE H. REA ET AL., DEFENDANTS. } Debt.

This day come again the parties, by their respective attorneys, as on yesterday, and the jury sworn herein being also present, the
29 hearing of this case was resumed, and the same was further heard, and the hearing thereof not being concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until Friday morning next, at nine o'clock.

And afterwards, to wit, at said regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Friday, the 6th day of October, A. D. 1871, to wit:

Case further heard and submitted to jury.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes, plaintiff, *vs.* GEORGE H. REA ET AL., DEFENDANTS. } Debt.

This day come again the parties, by their respective attorneys, as on Wednesday last, and the jury sworn herein being also present, the hearing of this case was resumed, and said case was further heard and concluded, and submitted to the jury, who retired to consider of their verdict herein.

And afterwards, to wit, at said regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Saturday, the 7th day of October, A. D. 1871, to wit:

Jury returned verdict for plaintiff.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes, plaintiff, *vs.* GEORGE H. REA ET AL., DEFENDANTS. } Debt.

This day come again the parties, by their respective attorneys, and also the jury sworn in this case, and said jury having considered
30 this case, as heretofore submitted to them, returned into court the following verdict, to wit:

"We, the jury, find for the plaintiff, and assess the damages at twenty-three thousand one hundred and twenty-seven $\frac{25}{100}$ dollars, (23,127 27.)

"JAMES M. BRAWNER, *Foreman.*"

Judgment.

It is, therefore, now considered by the court that the plaintiff, The State of Missouri, in the relation and to the use of William Hayes, recover against the defendants, George H. Rea and Edward D. Jones, the sum of twenty-three thousand one hundred and twenty-seven dollars and twenty-five cents, the damages so as aforesaid found to be due and assessed by the jury in this case, and also the costs in this behalf expended, and that execution be issued therefor.

And afterwards, to wit, at said regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Tuesday, the 10th day of October, A. D. 1871, to wit:

Motion for a new trial filed; also stipulation filed.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes, plaintiff, *vs.* GEORGE H. REA ET AL., DEFENDANTS. } Debt.

This day come the defendants, by their attorneys, and file their motion for a new trial herein; and said defendants also file a stipulation signed by the attorneys for the plaintiff, in reference to the time of filing the motion in arrest of judgment and bill of exceptions in this case.

And said motion for a new trial, herein filed as aforesaid, is in the words and figures following, to wit:

31 *Motion for new trial.*

In the circuit court of the United States for the districts of Missouri.

THE STATE OF MISSOURI, IN THE RELATION & to the use of William Hayes, plaintiff, *vs.* GEORGE H. REA AND EDWARD D. JONES, defendants.

Now come defendants, by attorneys, and move the court to set aside

the verdict of the jury heretofore rendered in this cause and grant defendants a new trial, for the following reasons:

1st. The court admitted illegal & improper testimony against the objections of defendants.

2nd. The court excluded legal & proper testimony against the objections of defendants.

3rd. The court gave illegal & improper instructions to the jury.

4th. The court illegally & improperly instructed the jury.

5th. The jury were deceived and misled by the instructions given by the court and by the action of the court. They believed, when the later instructions were given by the court, that the previous ones were withdrawn, and that then the later instructions were the only ones before them for their consideration.

6th. The verdict is against the law.

7th. The verdict is against the evidence.

8th. The verdict is against the weight of evidence.

9th. The jury were improperly influenced by reasons & considerations outside of any evidence adduced in the trial of the cause, or any matters properly connected therewith.

10th. Members of the jury were guilty of illegal & improper behavior.

32 11th. Members of the jury were biased and prejudiced against defendants, & so expressed themselves, which said prejudice & bias were not known to defendants & did not come to their knowledge till after the rendition of said verdict.

12th. The verdict should have been for defendants & not for plaintiffs.

CLARK & DILLON, &
JOHN B. HENDERSON,
Att'ys for Def'ts.

And the stipulation as to time of filing motion in arrest of judgment and bill of exceptions filed herein, on said 10th day of October, in said last-mentioned year, is in the words and figures following, to wit:

Stipulation as to time of filing motion, &c.

In the circuit court of the United States for the districts of Missouri.

THE STATE OF MISSOURI, IN THE RELATION & to the use of William Hayes,
vs.
GEORGE H. REA & E. D. JONES.

It is hereby stipulated & agreed that defendant may file a motion in arrest of judgment after the court shall have finally passed upon their motion for a new trial. If said motion for a new trial shall be overruled, defendants shall be required to file but one bill of exceptions in above entitled cause, which may embrace all matters excepted to & all other proper matters up to the time of filing said bill of exceptions. Defendants may file their said bill of exceptions within ten days after the court shall have finally passed upon said motions for a new trial & in arrest of judgment, if said motions shall be overruled.

SHARP & BROADHEAD,
Att'ys for Pl'ff.

ST. LOUIS, *October 10th*, 1871.

33 And afterwards, to wit, at said regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Thursday, the 19th day of October, A. D. 1871, to wit:

Motion for new trial submitted and taken under advisement.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes, plaintiff, *vs.* GEORGE H. REA ET AL., DEFENDANTS. } Debt.

This day came the parties, by their respective attorneys, and thereupon the motion heretofore filed for a new trial herein was argued by said attorneys and submitted, and the court, not being fully advised in the premises, takes further time to consider thereof.

And afterwards, to wit, at said regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Saturday, the 21st day of October, in said last mentioned year, to wit:

Motion for new trial overruled.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes, plaintiff, *vs.* GEORGE H. REA ET AL., DEFENDANTS. } Debt.

This day come the parties, by their respective attorneys, and the motion to set aside the verdict and judgment and grant a new trial herein, having been considered by the court, and being now fully advised of and concerning the premises, it is ordered that said motion be, and the same is hereby, overruled.

34 And afterwards, to wit, at said regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Monday, the 23rd day of October, in said year, to wit:

Motion to arrest judgment filed.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes, plaintiff, *vs.* GEORGE H. REA ET AL., DEFENDANTS. } Debt.

This day come the defendants, by their attorneys, and file a motion to arrest the judgment heretofore rendered herein for the reasons in said motion set forth.

And said motion filed herein, as aforesaid, is in the words and figures following, to wit:

Motion for arrest of judgment.

In the circuit court of the United States for the districts of Missouri.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hay's,
vs.
GEORGE H. REA AND EDWARD D. JONES, defendants.

Now come defendants, by their attorneys, and move the court to arrest the judgment herein against defendants for the following reasons:

1st. This court has no jurisdiction over the subject-matter of this suit as between plaintiff and defendants, plaintiff being the State of Missouri, and defendants being citizens of the State of Missouri.

2nd. The bond sued on in this action was given to the State of Missouri, and the legal title to all rights under the bond is in the
35 State of Missouri, and this being an action at law no other than the legal title can be recognized; this makes the State of Missouri the real plaintiff in this action.

3rd. The act of the legislature of Missouri which authorizes suits to be brought in the State courts on such bonds does not authorize any such suits to be brought in the United States courts.

4th. The declaration in this action does not contain any cause of action in favor of plaintiff and against defendants.

5th. The declaration in this action does not contain any cause of action in favor of William Hayes and against defendants.

6th. No similiter or replication has been filed by plaintiff to the plea of defendants herein.

CLARKE & DILLON &
HENDERSON & HAYDEN,
Att'ys for Def'ts.

And afterwards, to wit, at said regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Saturday, the 28th day of October, in said year, to wit:

Similiter filed nunc pro tunc.

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes, plaintiff,
vs.
GEORGE H. REA ET AL., DEFENDANTS. } Debt.

This day comes the plaintiff, by attorneys, and presents a similiter to the plea of nil debet heretofore filed by the defendants herein, and on motion of said attorneys it is ordered that the same be filed nunc pro tunc, as of date October 3, 1870.

Motion to arrest judgment overruled.

36 And the court having considered the motion to arrest the judgment heretofore rendered herein, and being fully advised of and concerning the premises, now orders that said motion be, and the same is hereby, overruled.

And afterwards, to wit, at said regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Wednesday, the 1st day of November, in said year, to wit:

THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes, plaintiff, *vs.* GEORGE H. REA ET AL., DEFENDANTS. } Debt.

Bill of exceptions filed.

This day come the defendants, by their attorneys, and file their bill of exceptions in this case, which, being examined by the court, is signed and sealed, and ordered to be made part of the record herein.

Writ of error allowed.—Bond filed & approved.—Supersedeas granted.

And the court having this day allowed a writ of error to the Supreme Court of the United States, and a bond with sureties having been executed and approved as required by law, it is ordered that a supersedeas be granted, staying all further proceedings upon the judgment heretofore rendered herein.

And said bond so filed herein and approved, as aforesaid, is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, Edward D. Jones, George H. Rea, George Bain, George L. Joy, are held and firmly bound unto William Hayes, in the full and just sum of thirty thousand dollars, to be paid to the said William Hayes, heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals and dated this first day of November, in the year of our Lord one thousand eight hundred and seventy-one.

37

Whereas lately, at the October term, 1871, of the circuit court of the United States for the districts of Missouri, in a suit depending in said court between The State of Missouri, in the relation and to the use of William Hayes, as plaintiff, and Edward D. Jones and George H. Rea as defendants, judgment was rendered against the said Edward D. Jones and George H. Rea, and the said Edward D. Jones and George H. Rea having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said William Hayes, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Edward D. Jones and George H. Rea shall prosecute said writ to effect, and answer all damages and costs if they fail to make good their plea, then the above obligations to be void; else to remain in full force and virtue.

EDWARD D. JONES. [SEAL.]
GEORGE BAIN. [SEAL.]
GEORGE L. JOY. [SEAL.]

Approved by—

SAMUEL TREAT, *Judge.*

And the bill of exceptions filed in this cause by said defendants is in the words and figures following, to wit:

Bill of exceptions.

In the circuit court of the United States for the districts of Missouri. October term, 1871.

38 THE STATE OF MISSOURI, IN THE RELATION and to the use of William Hayes, plaintiff,
versus
GEORGE H. REA & EDWARD D. JONES, defendants.

Be it remembered that this cause came on for trial at this present October term of this court, and a jury was duly elected, sworn, and empannelled to try the issues in said cause, and thereupon the plaintiff introduced the following evidence, to wit, the writ of attachment, endorsement thereon, levy return of sheriff, the claim of William Hay's made before said sheriff of the goods, &c., mentioned in the return, the bond sued upon, as follows:

Bond on attachment.

Know all men by these presents that we, Enos Clarke, as principal, and George H. Rea and E. D. Jones, as securities, are indebted to the State of Missouri in the sum of twenty thousand and two hundred & fifty dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated at St. Louis, this second day of September, eighteen hundred and sixty-nine.

The condition of this obligation is such, that whereas First National Bank of Washington City about to institute a suit in the circuit court of St. Louis, by attachment, against Perry Fuller, defendant, for the sum of 10,104 dollars and 66 cents:

Now, if the said plaintiff shall prosecute its action without delay and with effect, refund all sums of money that may be adjudged to be refunded to the defendant or found to have been received by the
39 plaintiff and not justly due to it, and pay all damages and costs that may accrue to any defendant or any garnishee by reason of the attachment, or any process or proceeding in the suit, or by reason of any judgment or process thereon, then this obligation to be void; otherwise to remain in full force.

ENOS CLARKE. [SEAL.]
GEORGE H. REA. [SEAL.]
E. D. JONES. [SEAL.]

Approved: Attest:

JOHN LEWIS, *Clerk.*

Writ of attachment.

The State of Missouri to the sheriff of St. Louis County, greeting:

We command you to attach Peller Fuller, by all and singular his lands and tenements, goods, chattels, moneys, credits, and effects, or so much thereof as shall be sufficient to secure the sum of ten thousand one hun-

dred & four dollars and 66 cents, with interest and costs of suit, in whose hands or possession soever the same may be found in your bailiwick; and that you summon the said Perry Fuller to appear at the next term of the circuit court of the county of St. Louis, before the judges thereof, on the first day of the said term, to be holden at the city of St. Louis, within and for the county of St. Louis, on the first Monday of October next, then and there to answer the complaint of First National Bank of Washington City, as set forth in the annexed petition; and also that you might summon all and every person in whose hand or possession soever any such lands, tenements, goods, chattels, moneys, credits,
40 or effects may be found, and particularly that they be and appear before the judges of our said court on the first day of the term aforesaid, then and there to answer unto what may be objected against them, and have you then and there this writ.

Witness John Lewis, clerk of our said court, with the seal thereof hereunto affixed, at office in city of St. Louis, this 2nd day of September, in the year of our Lord eighteen hundred and sixty-nine.

[SEAL.] JOHN LEWIS, *Clerk.*

Endorsement.

(Endorsed:) No. 13,744. No. 2. 2. Circuit court of St. Louis County, October term, 1869. First National Bank of Washington City vs. Perry Fuller. Attach. writ. Attach. am't, $10,104 66. Clarke & Madill, att'y for pl'ff. Issued 2nd Sept'r, 1869. John Lewis, clerk. $1, counterpart, due; $2 20, copies, due clerk; $3 00, att'ys paid.

Return of sheriff on writ of attachment.

Executed this writ in St. Louis County on the 3d day of September, 1869, by attaching and taking into my custody the following described personal property as the property of the defendant: 76 bolts of flannel, 16 bolts of plaid linsey, 3 do. satin, 72 Balmoral skirts, 18 felt skirts, 66 bolts of delaine, 32 do. towelling, 28 do. twills, 210 do. sheeting, 24 seamless sacks, 31 white woolen blankets, 100 grey woolen blankets, 2 bolts counterpanes, 7 do. wigans, 55 do. calico, 10 do. denims, 25 do. drilling, 39 do. hickory shirting, 158 do. muslin, 23 do. jeans, 19 do. satinettes, 26 do. cassimeres, 2 do. woolen shirting, 4 do. canvass, 2
41 do. cloth, 6 do. lining, 30 do. gingham, 16 do. lane, 21 bolts poplin, 1 do. tweed, 16 do. alpacas, 2 do. merino, 1 do. linen, 18 do. ticking, 25 do. cambric, 12 do. Canton flannel. And further executed this writ in the same county, on the sixth day of September, 1869, by attaching and taking into my custody the following described personal property as the property of the defendant: 114 bolts of calico, 8 bolts of ticking, 10 bolts of denims, and 90 bolts of sheeting. I further executed this writ in St. Louis County, on the 6th day of September, 1869, by attaching and taking into my custody the following described personal property as the property of the defendant: 1 case tobacco, 1 package tobacco (3 boxes,) 1 package pepper (2 boxes,) 1 package ginger, (2 cases,) 1 package umbrellas (2 boxes,) 4 barrels syrup, 7 barrels sugar, 1 sack of pepper, 38 cases shoes, 2 bags rice, 2 boxes pipes, 2 boxes groceries, 2 half-boxes tobacco, 9 cases goods, 4 rolls carpet, 18 cases hats, and 12 trunks and contents. I also executed this writ in St. Louis County, on on the 9th day of September, 1869, by delivering a copy of the writ and petition, as furnished by the clerk, to Perry Fuller.

JOHN McNIEL.

Claim of William Hayes.

To John McNeil, sheriff of the county of St. Louis and State of Missouri:

SIR: Take notice that I, William Hayes, claim the personal property hereinafter described, being the same that you have levied on and taken by authority of an attachment writ in favor of the First National
42 Bank of Washington City against Perry Fuller, being No. 524, returnable to the October term, 1869, of the circuit court of St. Louis County, in the State of Missouri, which said property is described as follows, to wit:

76 bolts flannel,
16 " plaid linsey,
3 " satin,
72 Balmoral skirts,
18 felt skirts,
66 bolts dela'ne,
32 bolts towelling,
28 " twill,
210 sheeting,
24 seamless sacks,
31 white woolen blankets,
100 gray blankets,
43 2 bolts cloth,
6 " lining,
30 " gingham,
16 " lane,
21 " poplin,
1 " tweed,
16 " alpacas,
2 " merinos,
1 " linen,
18 " ticking,
25 " cambric,
12 " Canton flannel,
114 " calico,
90 " sheeting,
44 2 half-boxes tobacco,
4 rolls of carpet,
2 bolts counterpanes,
7 bolts wigans,
55 " calico,
10 " denim,
25 " drilling,
39 " hickory shirting,
158 " muslin,
23 " jeans,
19 " satinett,
26 " summer woolen cassimeres,
2 " woolen shirting,
4 " canvas,
8 " ticking,
10 " demins,
1 case tobacco,
1 package tobacco (3 boxes,)
1 " pepper (2 do.,)
1 " ginger (2 cases,)
1 " umbrellas (2 boxes,)
4 bbls. syrup,
7 " sugar,
1 sack pepper,
38 cases shoes & boots,
2 bags of rice,
2 boxes pepper,
2 " groceries,
19 cases of hats & caps,
12 trunks hats & caps,
9 cases of dry goods.

My interest in said property is full and entire. I own the whole of said property absolutely, and I am, in good faith, the lawful owner of the above interest claimed by me in said property. The defendant, in said attachment, viz, Perry Fuller, has no right or title, directly or indirectly, in the interest in said property claimed by me, and this claim is not made in collusion with said defendant for the purpose of vexing, hindering, or delaying the plaintiff in obtaining his just rights.

Said property is of the value of twenty-five thousand dollars.

WILLIAM HAYES.

Sworn to and subscribed before me, this 16th day of September, 1869.
Witness my hand & seal of the circuit court of St. Louis County.
[SEAL.] JOHN LEWIS, *Clerk.*

45 *Testimony of William Hayes.*

The plaintiff then introduced WILLIAM HAYES as a witness, who testified as follows:

By Mr. BROADHEAD, (handing paper to witness:)

Q. Is that your signature?

A. Yes, sir.

Q. What paper is that?

A. That single paper, not having read it thro' I can't say, positive, but it appears to me to be a statement of the goods which I laid claim for.

Q. Before the sheriff of St. Louis Co.?

A. Yes, sir.

Q. Where were these goods at the time you made that claim?

A. They were in the hands of the sheriff.

Q. Under attachment in a suit against Perry Fuller & Co.?

A. Yes, sir; under attachment in that suit, so stated to me.

Q. I will get you to look at the list of these goods, and state, as near as you can, the value of these goods.

A. The goods, as described in this bill here, simply indicates a certain quantity, without any value attached to them.

Q. I know, but I want your estimate of the value.

A. It would be impossible, from this paper, to tell you what the value of them is.

Q. What was your estimate of the value; have you a memorandum of it?

A. I have a memorandum; I can tell by referring to it.

Mr. HENDERSON. When you speak of the value, what do you mean as to the value; value where?

A. The price I agreed to pay.

46 The COURT. What is this?

Mr. BROADHEAD. The question of value.

The COURT. He says he signed the claim.

Mr. BROADHEAD. Yes, sir; I introduced Mr. Hayes to prove the value of these goods. I want to show that they were worth more than fifteen thousand dollars—more than they were sold for.

WITNESS. The value of the goods enumerated in this schedule here is twenty thousand four hundred & sixty-five dollars & sixty cents, as provided. This only covers the attachment made here.

Q. That is the value of the goods, then, attached in St. Louis

A. Yes, sir.

Q. Where did you buy these goods?

A. I bought them in New York.

Q. From what house?

A. Purchased from Buckley, Sheldon & Co., Dubois, Magoffin & Co., H. W. Belcher & Co., and others.

Q. Did you buy these goods yourself?

Ans. I did, sir.

Q. You were in New York at the time?

A. I was in New York at the time I bought the goods.

Q. Was any one interested with you in the purchase?

A. There was no one interested with me.

Cross-examination by Mr. Henderson:

Q. There were several seizures of these goods were there not?

A. Three seizures.

Q. Where?

A. One in New York, this one here in Saint Louis, and one in
47 Kansas City.

Q. Did you examine the goods here clear through to see what goods were seized here?

A. I examined a number of the cases, and a number of the cases were described in the invoices made to me. That is the manner in which I arrived at the value in the cases.

Q. How were the cases marked?

A. Marked with various numbers on them, as indicated in the bill of lading, and also in the invoices.

Q. Were the goods open when you examined them here?

A. A portion of them were open when I examined them.

Q. What portion; how many of them?

A. What there were in one room. I can't tell you the number; the cases were piled in two rooms when I saw them.

Q. In whose charge?

A. Said to be in the hands of the sheriff.

Q. Did you take the goods out and examine to see whether they were there?

A. I was not allowed to do it.

Q. Who refused you?

A. Some of the officers having charge of it.

Q. Did not you state, in your deposition, that they did not refuse to allow you to examine them?

A. When the goods were exposed, and they took them out themselves, they allowed us to go in and examine them.

Q. Did you do so?

A. We went in and saw that the memorandums we had previously made were confirmed.

48 Q. You examined each package?

A. Each case.

Q. When were they opened; what time did you examine them?

A. I think on the 14th and 15th of September. I think it was the 16th of September that they were offered for sale, and it was on the 14th and 15th of September that I had access to the room to see that the cases corresponded with those on a memorandum that had been furnished me by one of the clerks whom I had sent for the purpose of getting a report of the goods attached.

Q. What time did you buy these goods?

A. I bought them in the latter part of August, 1869.

Q. About what time did you commence buying?

A. I think it was about the 20th of August. The first invoice that was made was the 21st.

Q. What occasioned your being in New York at that time; what carried you there; did you go there to buy goods?

A. I will answer that by saying that the business which first called me there, was to assist in the settlement which Perry Fuller & Co. had with Stettor and Bros., New York, and which had occupied a good portion of my attention during the summer; that is to say, from the month of May down to July and August. I was more or less of the time engaged during these four months in assisting in making the reports upon which to base his settlement, and finally to assist him in completing the settlement.

Q. Did anybody else assist you?

A. In the finality of the matter there was no one assisted me.
49 I was chosen as an arbitrator.
Q. What time was that?
A. It was somewhere about the first of August.
Q. What time did you complete the settlement?
A. I do not know that I can tell precisely the date. We were very many days engaged in it. The operations were large, and there was a large amount of goods to go over.
Q. By who' were you first called to go there and assist in that settlement?
A. I was first requested to assist in making the settlement by Alexander McDonald, in Washington, one of the partners.
Q. What time?
A. It was at the time I made the settlement with him.
Q. What time was that?
A. The basis of the settlement was going on during the month of April, and until the first of May, 1869.
Q. At what time in April?
A. During the month of April?
Q. Where was that?
A. In Washington.
Q. When did you leave Washington?
A. I left Washington last, I think, on the 2nd or 3rd day of May; I think on the 3rd day of May.
Q. Was any power of attorney given you by Perry Fuller to do business for him—transact business for him at that time?
A. Not given me at that time.
Q. What time was it?
A. Given to me anterior to that; given to me in the month of
50 April, 1868, I think.
Q. What was that?
A. The power of attorney was to transact any business that was necessary for the collection and settlement of the affairs of Perry Fuller & Co.—Fuller and McDonald—Perry Fuller and A. McDonald.
Q. At what place?
A. Anywhere. In any State or Territory.
Q. You say you left there about the first of May; what did you do under that power of attorney; did you collect anything?
A. Not then.
Q. Did you at any time?
A. Yes, sir.
Q. What did you collect?
A. I collected various bills in Kansas.
Q. What were they; from whom?
A. Well, I say I collected; I would qualify that by saying I settled accounts, and got what I could get.
Q. What did you take?
A. Notes and mortgages.
Q. Upon whom?
A. Parties I was settling with.
Q. Can you name them?
A. Yes, sir.
Q. Name them.
A. I took from the widow of the late Senator Lane bonds and mortgages for an indebtedness which Senator Lane was owing Perry Fuller & Co., at the time of his death.

51 Q. How much?
A. I do not remember the amount.
Q. As near as you can remember.
A. Perhaps four or five thousand dollars.
Q. Did you get any money from Mrs. Lane?
A. Not any.
Q. Who were those notes upon that you got from Mrs. Lane; notes of Mrs. Lane's, or of other parties?
A. Other parties; mortgages which they had held.
Q. State upon whom.
A. I cannot give you the names; I could by reference to the books.
Q. Name some of them.
Mr. BROADHEAD, It seems to me this is getting into a matter that is not relevant to the issue, and leading to a very extended examination about other matters.
Mr. HENDERSON. That is what I propose to do. If there is any doubt upon the mind of the court about it I will open it up otherwise, and show the court clearly what I want to arrive at. I will drop this subject right here; Mr. Broadhead's exception may possibly be well taken at this point—at this stage of the case—and I will stop there and pursue it in a different way. The court will see what I mean.
Q. You say you were called upon, Mr. Hayes, to attend the settlement of Stettor & Co., by Perry Fuller; where were you at that time?
A. I was at my home, in Fairport, Monroe County, New York, ten miles east of Rochester.
52 Q. How long had you been there before you were called by Perry Fuller to go to New York and settle that matter?
A. I held myself in readiness to come when called upon, and I did not go until called for by Perry Fuller.
Q. You had no idea of buying goods when you went down there?
A. This was in the month of May, I think.
Q. That Perry Fuller called you there?
A. Yes, sir.
Q. Did you go?
A. I did.
Q. Did you have any idea of buying goods?
A. No, sir.
Q. You had no notion of it?
A. No, sir.
Q. What time did you arrive in New York?
A. It generally took me about eight hours from my place of residence to New York.
Q. I say what time did you go down to New York in response to Perry Fuller's request?
A. I went down immediately, when called; it was in the month of May, but I can't give you the precise date; there is nothing in my hand to give it from.
Q. Did any telegraphic dispatches pass?
A. Yes, sir; I sometimes went on a telegraphic dispatch; and I think upon one or two occasions on a letter.
Q. Had anybody else been employed by Fuller to assist in the settlement?
A. I was told there had.
53 Q. Who?
A. Hamilton G. Fant, of Washington, I think, was called.
Q. Who else?

A. That is the only one I know of. I only know that from being told; I do not know it from my own knowledge; I never came in contact with him.

Q. How long were you in New York making this settlement?

A. Sometimes, when called there by Perry Fuller, I would prepare parers as requested to do. It might take one, two, three, or four days, and when completed I returned home to Fairport.

Q. What was the nature of this settlement you were making?

A. It grew out of an interest which Stettor and Bros. and Perry Fuller had in certain contracts which had terminated; contracts for the furnishing of Indian supplies in different portions of the country.

Q. Did Stettor and Bros. have securities belonging to Fuller?

A. Of my own knowledge I know there were securities, bonds, and stocks of various kinds, which Mr. Fuller had placed in the safe which he had access to belonging to Stettor.

Q. When?

A. I think they were placed there sometime in 1868.

Q. At what time?

A. I think it was the early part of 1868.

Q. What were they; you made the settlement; you know all of them; what were they?

A. I had not any occasion to call up these securities.

Q. Do you know any of them?

54 A. I know somewhat of the nature of them.

Q. What were they?

A. Some of them were what was called paper stock, for the manufacture of paper; a stock company in existence in New York, which he owned stock in, and another of a fiber company for the same purpose; and another of button stock, and mineral stocks, and bank stocks; and I don't know that I could now enumerate them all.

Q. What bank stocks?

A. Bank stocks of the Merchants' National Bank of Little Rock; of the First National Bank at Forth Smith.

Q. How much of each?

A. I can't tell you the amount. I don't remember.

Q. What was done with these stooks upon the settlement?

A. I do not know.

Q. What day of the month did you complete this settlement, did you say?

A. It is so long since, I would be unable to name the date.

Q. As near as you can remember?

A. I should think not far from the middle of August.

Q. In the meantime did you commence a suit against Perry Fuller whilst you were transacting this business for him?

A. I did.

Q. What was that for?

A. For the reason that Andreas Dole, a creditor of Perry Fuller & Co., was aiming to attach any stocks that he could get his hand on, and further, that, fearing that in some adjustment of matters between

55 Stettor and Fuller that Fuller would be placed in such a position that I would finally be compelled to lose the claims which I held against Perry Fuller & Co., I felt that it was my duty, with the knowledge that I had, to attach anything I knew of for my safety, until I could reach a compromise and final settlement with him.

Q. Did Fuller ask you to commence that suit?

A. He did not.

Q. Did you tell him that you were going to commence it?
A. I told him I had commenced it.
Q. You did not tell him until after you had commenced it?
A. No, sir; I did not.
Q. Did you first go to Fuller's attorney to commence it?
A. I did sir.
Q. Who was he?
A. Mr. Nelson.
Q. Nelson is a son-in-law of Fuller's, is he not?
A. He is now; he was not at that time.
Q. He was then his counsel?
A. Yes, sir;
Q. Were you trying to keep it a secret from Mr. Fuller?
A. No, not trying to keep it a secret, but trying to persuade Nelson to take this position, inasmuch as I was a friend of Fuller's and he knew that I was trying to do all I could to assist Mr. Fuller in making the settlement, but I thought he owed it to me to guard me.
Q. What did he owe you for?
A. For borrowed money.
Q. When did you loan it to him?
56 A. I can't give you the date of it now; I can by reference to the books.
Q. Have you got the books?
A. I have books I can refer to.
Q. Have you got the books kept at the time you loaned the money?
A. Yes, sir.
Q. What is that—a ledger or a journal?
(Book presented to the witness.)
A. This is a ledger.
Q. Have you got the journal here?
A. No, sir.
Q. What is that—Perry Fuller's book or yours?
A. Perry Fuller's book, sir.
Mr. BROADHEAD. The book that we were notified to produce.
Mr. HENDERSON. Does this represent all the business of Perry Fuller?
A. Yes, sir.
Q. Explain to the jury where the indebtedness is?
A. On the 22nd day of October, 1865, I loaned him three thousand dollars. I also loaned him $4,550, which was entered up at the same time, from July, at the time, and I hold his check for it—hold his check on the First National Bank of Lawrence. At his request it was taken, and he then gave me a certificate of deposit for it.
Q. Is there any other that you can name?
A. If you give me time, I will find it. On the 28th of November, 1866, I loaned him $5,000; on the 29th of December, I loaned
57 him $2,750; in the intervening time there is another thousand dollars I loaned him, which I am unable to put my finger on. I think I had my hand on it; that is on the 25th day of January, 1865, a thousand dollars more. That is all that I loaned him that I took certificates of deposit for.
Q. Have you got the journal here?
A. I have not.
Q. Why did you not bring it?
A. I had no access to the books; I don't know where they are.
Q. How did you get this?
A. I got it from Mr. Nelson.

Q. Did Mr. Nelson bring it here?

A. Yes, sir.

Q. You kept these books, didn't you?

A. This is the handwriting of one of the partners of Perry Fuller and Co., F. A. De Wolfe.

Q. You assisted De Wolfe in keeping the books, did you not?

A. Not at the time of these entries; I did afterwards.

Q. What is the meaning of that entry [indicating]?

A. I had nothing to do with it. I infer from looking on the books that it was entered on the wrong side of the "bills payable." That is my supposition; I know nothing of it.

Q. Whose handwriting is that—"Hayes"—that is a different handwriting?

A. That is all one handwriting. That particular entry there is the handwriting of J. R. Seymour, cashier of the First National Bank of Fort Smith, who was a portion of the time, under the direction of Alexander McDonald, assisting in keeping the books of Perry Fuller and Co.

58 Q. These amounts on this side, are any of them charged up to bills payable here; any of these checks and certificates of deposit?

A. These were certificates of deposit.

Q. For money loaned.

A. For money loaned.

Q. Now on the debit side of this account; are there any other of these accounts?

A. I will have to ascertain that——

Q. I want to know whether any of those that have been paid are charged on this side?

A. They are not charged there, but I will show you where they are charged.

Q. Let me see?

A. Every month, or every three months, as the case may be, and as the business admitted, a balance sheet was taken off, of bills payable, whenever they were balanced up. Finding that there was a certain amount of bills payable that were still unpaid, it was the custom to schedule what notes they had, and each one of these balance-sheets—these certificates I mean, were transferred from time to time until the settlement between Macdonal' & myself. On the first day of May, 1869, these certificates of D. or deposits were all charged up to bills payable and credited up to my individual account.

Q. State to the jury what certificates they were?

A. One for $4,550, one for $1,000, one for $2,000, one for $5,000, and one for $2,750, making a total of $15,300.

59 By Mr. BROADHEAD. You swear you held certificates of deposit for these amounts on Perry Fuller.

A. I did.

Q. What did I understand you to say was done with these bills on the first of May, 1869?

A. They were charged up to bills payable and credited up to my individual account. The principal and the interest amounted to $19,630 01.

By Mr. HENDERSON. That was your account at this time that you were credited with—the amount of bills payable?

A. Yes, sir.

Q. Who entered this?

A. I entered that myself. That is my entry.

Q. This is an open account to April 30, 1869?

A. O, no, sir; it would cover about 8 or 10 pages. This was the last of it.

Q. It is brought up, I reckon?

A. Yes, sir; I will go back to it so you can see.

Mr. HENDERSON. I desire this book shall be considered in evidence.

Q. How did your account stand up to that date on the settlement?

A. On the 28th day of April, or rather on the 27th day, I went to New York, where the office of Perry Fuller & Co. is located, at 42 and 44 Broadway. Mr. DeWolfe, one of the partners, by an appointment requested me to come there, and I did so.

Mr. HENDERSON. You need not go into that. I ask you if that
60 is the balance of the account to that date? Is that your account with Perry Fuller & Co. to that date?

A. If the court will allow me to state it in my way I can state it very clearly.

Q. It is a very simple proposition for you to state to the jury how it stood at that date between you and Perry Fuller & Co.

A. On the 30th day of April F. A. DeWolf turned over to me bills receivable: Thompson's note of $250; D. G. note, $250; Rankin's note, $273; Rankin, $273; Rankin, $123; Sam'l D. Boyd, $270; Sam'l D. Boyd, $120, $380, $480, $500; real estate, $211; interest in exchange, $3,114.

Q. What did he charge you interest in exchange for?

A. Interest in change accumulated on these notes.

Q. How much did he turn over to you?

A. He turned over to me, as the figures show there, $3,362 46.

Q. That is on the 30th day of April?

A. Yes, sir.

Q. State the condition of your account at that date?

A. My present account on the books of Perry Fuller & Co. then stood, $1,363 41, overdrawn, on the 30th day of April.

By. Mr. BROADHEAD. Explain the whole matter.

A. On that night I returned to Washington, and on the following day, the first day of May, I made a settlement with Alex. Macdonald for the certificates of deposit which I held of $19,630; from that was deducted $1,363 41 to balance up the book account.

By Mr. VOORHEES. That was what was due to you on the book account?

A. That was what they turned out to me, and when I balanced
61 up the book account I owed them $1,363 41, which was to be deducted from the certificate of deposit.

By. Mr. HENDERSON. Proceed now and state to the jury what was the condition of your account at that date?

A. Mr. Macdonald turned over to me in payment of this $19,630, the accounts of the Memphis and White River Packet Co. stock, $12,160 76. There then remained due me, $6,030 84.

Q. What was done with that?

A. It is not yet paid.

Q. I see this charged to bills payable. Have you a note for it?

A. I have.

Q. Have you got it with you?

A. I have, sir.

Q. What was that other entry of $724; the next item on this account?

A. $724 25; that they owed me.

Q. What was that for?

A. For various expenses I had incurred for their account.
Q. Will you let me see that note that you hold now for that amount?
A. I will, sir. (Paper shown.)
Q. This is a certificate of deposit, dated November 28, 1868. I asked you for the note for this $6,030 84?
A. That is it, sir, taken out. That is the amount that is due, and the interest on the note at the time this settlement was made, and I merely took a certificate of deposit.
Q. How did you close your books in that way?
62 A. That is closed to bills, this $1,030.

A. Very well; that's what makes it.
Q. You are a book-keeper, are you not?
A. I am; and if I am satisfied to hold it that way it is my privilege to do so.
Q. How did you settle it?
A. By charging it up to interest and exchange, and in crediting myself with the amount of it.
Q. How does that keep bills payable correct?
A. It keeps it perfectly straight. I was satisfied with it, and Mr. Macdonald was satisfied.
Q. And you kept it in that way?
A. I did; and it was with their consent that it was made in that shape.
Q. That is the amount that they owed you on the 28th day of May?
A. Over and above the amount they had paid to me in the manner in which they had paid it.
Q. You have got that amount of $1,300; that is what was deducted out of what was due, and they fill in your debt—$6,030 84. That is all they owed you on that occasion. Did they owe you anything else?
A. Yes, sir.
Q. What?
A. The assurance that this property they turned out to me I should realize on at the value at which I took it.
Q. What did you take it at?
63 A. I took the steamboat stock at the amount I named, and they guaranteed to me that it should nett me that money.
Q. How much?
A. $12,167.
Q. That is the same stock that you deposited with Buckley, Sheldon & Co., on your purchase?
A. Yes, sir.
Q. You deposited it with them for a little more that that, didn't you?
A. I deposited it with them for $12,267. It was my remembrance.
Q. You deposited it with them for a little more than you gave for it?
A. No, sir; for it was subject to the collection when I placed it in their hands; and that is what I scheduled it from recollection.
Q. Have you any other certificate of deposit except this?
A. Not now.
Q. Did you make an entry there of interest upon those books?
A. Yes, sir.
Q. Show it to me, will you?
A. That is it. Here I have them, sir, page 275. "Interest and exchange debtor to W'm Hays, interest on $4,550, $626 37; interest on $1,000, $334 16; interest on $2,000, $505; interest on $5,000, $1,212 50; interest on $2,750, $655 48."
Q. You know very well I did not ask you for that. I asked you for

bills-payable account, where interest was credited so as to get your bills-payable account correct?

64 A. They don't enter them that way. The book-keeper makes entries on the bills-payable account, and the interest and exchange has to take care of itself.

Q. Will you turn me to that account where it is closed by bills payable?

A. I will. He closed the account on May the 1st, 1869. There are two accounts kept in the ledger. There's a debit side of bills payable, and there's a credit side of bills payable, and here are the five notes, certificates of deposit, which balance there. There is $1,000 there, and here is $1,000 here; there is $4,550 there, and there's $4,550 here.

Q. I thought you showed me these accounts in the bills-payable account elsewhere?

A. This is the credit side of the account. This is the credit side and this is the debit side.

Q. Why do you credit them again?

A. It is credited every time that bills payable are balanced.

Q. Have you got them there at other times?

A. Yes, sir; just as many times as the bills were balanced up.

Q. How often did you balance bills payable?

A. I said to you it was just when it happened to come most convenient.

Q. Show me the close of your account May 1st, 1869, where the books are closed with the bills payable of a thousand dollars?

A. The difference, as I hold it, is $5,000, while the note calls for $6,000. If I keep the account and hold it for that

65 it is my privilege to do it.

Q. How is it on Mr. Fuller's books?

A. Mr. Fuller's books are closed all right.

Q. Then you here say these books are closed without entering to the credit of bills payable the amount of notes that you have entered up there?

A. It is entered up that way.

Q. Did you request the bringing of this ledger here?

A. I did not, sir.

Q. What was it brought here for, then?

A. In answer to a summons served on me to produce the books of Perry Fuller & Co., and also my own private book.

Q. Don't you know that I cannot tell whether the ledger is correctly kept, unless I have the journal so as to see what is specified. What interest have I to know to whom the note is payable, when it is entered to the credit of bills payable, unless I have the journal to see whether the man deposited the money or not?

A. They don't enter that on the journal.

Q. Did you keep a cash account there?

A. They kept a cash account, a journal, and sales-book.

Q. So this is giving credits of yours charged to cash account on these books?

A. Yes, sir.

Q. Don't you know that anybody else may have deposited it, and for me, or the court, or jury to know, unless you bring the journal?

A. I told you that is the only book I have any knowledge of or can get.

Q. What did you post your books from?

66 A. From the journal.

Q. Don't you know I can't tell whether a book is properly kept or not, unless I have the journal?

(No answer.)

Q. You are a book-keeper, are you not?

A. I am.

Q. Don't you know that that is a fact?

A. I shall have to answer that by saying that all men, when they settled their account' have settled it on that ledger.

Q. That is all the answer you can give? Now, during the settlement of this Stettor account you instituted a suit against Perry Fuller without his knowledge or consent.

A. I did.

Q. For how much?

A. I instituted it for an amount sufficient to cover this steamboat stock, and the certificates of deposit which I held.

Q. Didn't you state in your deposition here that it was for money loaned to Perry Fuller on back account, that you instituted it?

A. I say it was for that.

Q. How much did you commence the suit for?

A. I think I figured in my mind somewhere in the region of about 23,000 dollars. I said 19 and 3 would be 22. I put it large enough to cover it.

Q. You only took the steamboat stock at 12,167 dollars, & you held a note of $6,300 *dollars*. How did you make the other five thousand?

67 A. I wasn't so cetain that I was going to collect them, and I meant to have a lien upon Perry Fuller, and I meant that he should be forced to take some steps to give me my money back, and when he wanted the stocks back he could have them.

Q. You put in the 5,000 dollars for good account, did you?

A. I stated what I did.

Q. You had already put in the 12,000 dollars steamboat stock with Buckley, Sheldon & Co., and realized the money on that?

A. No; I did not.

Q. You deposited it as collateral?

A. Not then, I had not.

Q. Didn't you do it just after; isn't that the same stock you deposited with Buckley, Sheldon & Co. to buy goods?

A. After I withdrew the suit.

Q. You had withdrawn the suit?

A. I had.

Q. You had finished up the settlement, then, before you commenced to buy goods? Didn't you tell Buckley that that stock was worth all that you deposited it there for?

A. I told him exactly what was stated to me, word for word; of my own knowledge I knew nothing.

Q. What did you state?

A. I stated the representations Mr. Macdonald had made to me.

Q. What was that?

A. That the stock was good for the amount it represented.

Q. You believed it?

A. I believed Mr. McDonald's word.

Q. What reason did you have to disbelieve, when you commenced that suit?

A. I have answered the question.

68 Q. Why did you disbelieve Mr. McDonald afterwards, and institute a suit for 22,000 dollars, when yon knew it was good?

A. For the simple reason that I had written several times about it, and got no word, and I felt uneasy.

Q. To whom did you write?

A. I wrote to a man he had referred me to, as having control of the stock at Memphis.

Q. Who was it?

A. Think Davis was his name.

Q. How often had you written to him?

A. I think about three times.

Q. Had you written to McDonald?

A. I had not.

Q. You had entire confidence in McDonald, you say.

A. I had confidence in his word.

Q. Did you have the assignment of the stock?

A. The stock was sold to me.

Q. Did you have an assignment of it on the books of the company?

A. What company?

Q. The White River Packet Co.?

A. I never could learn that I had.

Q. What did you take from McDonald for it?

A. The bill of sale which he rendered.

Q. That is attached to your deposition?

A. That is attached to my deposition.

Q. Was anything said there in that agreement—the transfer of it—that he was to stand good for it beyond what he sold it to you at?

A. There was an understanding between McDonald and myself with reference to that.

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Q. That was an outside understandimg?

A. It was.

Q. Fuller had nothing to do with it?

A. Fuller wasn't present in the matter; he had no knowledge of it. He was in New Orleans at the time this settlement was made.

Q. In making your affidavit to obtain the attachment, you swore that Perry Fuller owed you that amount over and above all credits and demands he had against you?

A. Yes, sir.

Q. How did you get that 5,000 stuck on?

A. You will have to put that question again.

Q. How did you add 5,000 dollars? Why did you sue him for 23,000 dollars?

A. For the simple reason that the claims which I held that were to be made good for me & for which I hadn't got the money figured about that.

Q. Were you afraid you were going to lose your money?

A. I was.

Q. Did you tell Fuller so?

(No. answer.)

Q. Were you uneasy when you instituted that suit?

A. I was.

Q. How much did Fuller owe you at the time you instituted that suit?

A. He owed me all that I had loaned him, and for which I hadn't got in my hands a single dollar.

Q. Then why didn't you institute the suit for more than 23,000 dollars?

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A. Perhaps ignorance.

Q. Do you say that that was the case?
(No answer.)
Q. You made those figures upon the books there yourself, didn't you? You entered them there as clerk?
A. I did.
Q. Havn't you charged yourself there with these things, White River Packet stock, &c.?
A. I have.
Q. Is that the way you keep books, after entering them that way, to have a verbal, outside understanding with regard to making them good?
A. These were turned over to me in the absence of having anything else to turn over, and McDonald requested me to settle up the account, and he would see that it was made good. I did it, but I say to you that afterwards I became dissatisfied with what I had done, and if aay power lay in my hands I meant to reach it.
Q. Did you look after the parties, Fuller and McDonald?
A. I didn't go after McDonald. I did go after Fuller & importuned him that he should pay me the last dollar that he owed me.
Q. Didn't he send dispatch after dispatch to you at Fairport to come to New York?
A. Yes, sir.
Q. Didn't he tell you to come down there and institute that suit against him?
71 A. No, sir.
Q. Didn't he dispatch you so?
A. No, sir.
Q. You say you were uneasy and fearful you were going to lose your money, and you instituted a suit against Stettor, and afterwards settled with him? How much did Stettor fall in debt to you?
A. I had no claim against Stettor.
Q. I thought you said you helped Stettor to make a settlement?
A. O, that's another thing.
Q. You were his chief book-keeper?
WITNESS. You are talking about my settlement?
Q. For Perry Fuller & Co.?
WITNESS. O, yes, all right.
Q. How much did Stettor fall in debt to Fuller & Co. in the settlement?
A. I havn't the figures by me.
Q. Substantially, what was it?
A. As near as I can now remember, I think it was found that Perry Fuller & Co. were owing, besides claims for which Stettor was equally bound, share & share alike, with Mr. Fuller's proportion, or Perry Fuller & Co.'s proportion yet to pay, was about 29,000 dollars instead of his having anything coming to him.
Q. Didn't Stettor & Co. give anything to Fuller as the result of that settlement—Perry Fuller?
A. Not to my knowledge; no, sir.
Q. Didn't he execute a note of 10,400 dollars, to Perry Fuller?
A. Not to my knowledge.
72 Q. About that amount?
A. No, sir.
Q. Or Mrs. Mary Fuller, wife of Perry Fuller?
A. I think he did.
Q. How much money did he pay her?

A. It wasn't a transaction that entered into anything I had to deal with, and if I tell you, sir, it is only from recollection I may have—far abroad from the facts.

Q. Didn't you receive the money and take it down to Mr. Butts?

A. Not at all.

Q. Who did?

A. You will have to ask some one that knows; I do not.

Q. Have you any knowledge on that subject?

A. I have not.

Q. Who took the note down?

A. I don't know. His matters were in the hands, I think, of Swanson, & Co., bankers in New York,

Q. Fuller owed them, too, didn't he?

A. Fuller & Stettor owed them on an indebtedness—that was the portion that Perry Fuller at the time of the settlement of Stettor & Co. assumed—which covered this 29,000 dollars. The 29,000 dollars covered the claim, & also claims held in New Orleans, which Mr. Fuller had already given his obligations for, & agreed to take care of.

Q. Do you remember, now, your statement made to Buckley, Sheldon & Co. in order to obtain credit there?

A. I do.

Q. What was it?

73 A. I represented to Mr. Wheeler, and he took it down in writing—as near as I could remember, at an off-hand shoot——

Q. Well, sir?

A. I said to him that I had cash in hand, and notes due, which I could make available before the 1st day of December—ten thousand dollars.

Q. Well, sir, what else?

A. Steamboat stock turned out to me by Alex. McDonald, in the settlement with him, which he stated to me was represented in the stock for 25,000 dollars, and for which the books showed, & I accepted it at twelve thousand two hundred & sixty-seven dollars.

Q. What else?

A. Real estate in Kansas, for which I held a bond executed by Alex. McDonald to F. A. DeWolf, on the part of Perry Fuller, for McDonald & Fuller property which Northrup and Chick sold to them for 10,000 dollars, turned out to me for 7,000. I scheduled it to them at 10,000 dollars.

Q. What else?

A. Then I think I named to them a piece of property that I had in Shreveport, that I valued at 3,800 dollars.

Q. What else?

A. An assignment of a mortgage made to me by Perry Fuller for property which he had sold to Mrs. Eldridge in Lawrence, his former residence, when living in Lawrence. The mortgage covered about 3,800 dollars, with the interest on it at that time.

Q. What else?

A. Bills receivable, I think about—somewhere along about 2,500

74 or 2,800 dollars in round figures—may have been a little more or less—when I came to cypher them out they amounted to more than that.

Q. This property in Kansas City—who did you get that from?

A. Mr. McDonald made the bond, which he and F. A. DeWolf, for Perry Fuller, executed—engaging to make me a deed of this property, and it cited in the body of the bond that it was property held in trust

by Edward E. Fuller, the son of Perry Fuller, for account of McDonald and Fuller.

Q. What is the date of that bond.

A. That bond was executed to me, I think, somewhere along about from the 20th to the last of April. It was one of the first notes that McDonald turned out to me.

Q. Do you know how Winthrop and Chick got that property—how Perry Fuller got that property from Winthrop and Chick?

A. I do, sir.

Q. How.

A. He got it in exchange for property which he sold in Kansas, belonging to McDonald & Fuller—somewhere about 38,000 or 40,000 acres. I think I stated at one time 32,000 acres. By reference, I think it was more than that sum, 38,000 or 40,000 acres. He took that property at ten thousand dollars, & they paid him cash for the balance.

Q. You took a bond from Edward E. Fuller for it?

A. I took a bond from McDonald and DeWolf, as the attorney for Perry Fuller in fact.

Q. What had DeWolf to do with that property? He had no interest had he?

75 A. DeWolf was representing Perry Fuller, and held a power of attorney that gave him supreme control and to transact all business for Perry Fuller—same as he could himself.

Q. You had one, too, did you not?

A. I had one also—but mine specified what mine was for—mine was for the settlement up of the indebtedness owing to any of the firm.

Q. How did it get into Edward E. Fuller's hands? You say that property was held in trust by him.

A. I only know from Fuller's telling me. He requested them to make the deed to Edward E. Fuller.

Q. Then you had to look to Edward E. Fuller for the debt?

A. I looked to McDonald & Perry Fuller to execute a bond they had given me that the debt should be paid.

Q. Suppose they did not comply?

A. Then the claim was good against them.

Q. You took McDonald and Fuller's bond to be good to you for that conveyance?

A. Yes, sir.

Q. Didn't you take Edward E. Fuller's bond also, afterwards?

A. No, sir. I called on Edward E. Fuller to execute it. At first he promised me he would do it immediately, but he didn't do it, and I continued to follow him up, & then I insisted on Perry Fuller's having him do it. He promised me he would, and came so near it as to say that tomorrow morning it would be done, but it was not. Excuses and excuses were made & I haven't got it yet.

Q. You took an obligation from Edward E. Fuller, did you not?

76 A. I took a sort of specification or consent on his part that he would execute it.

Q. Did you agree to do anything for him if he would execute it?

A. What do you mean?

Q. I mean to say, did you give him any consideration, or promise, if he would execute that deed?

A. I think not—in writing.

Q. Did you give him any verbal promise?

A. He claimed that the property was his, and the property was to be made over to me to pay this certificate of deposit which I have men

tioned, and its representation was that its value should be made about equal to 7,000 dollars, and I engaged to let Edward E. Fuller have this note upon his making me this deed, and left the matter for him to settle between himself, Perry Fuller, & Alexander McDonald.

Q. You didn't make him any agrement in writing, you say? It was a verbal agreement?

A. I made him a memorandum—just to keep—not a legal paper.

Q. Was it signed by you?

A. It was signed by me. I can't remember what it was. The substance of it was that when he executed to me this deed for this property that I would surrender to him this note.

Q. Which note?

A. The certificate of deposit which I handed to you.

Q. I thought that was due to you?

A. It is.

Q. I thought the property was due to you too?

A. The 7,500 dollars was in demand.

77 Q. Why did you agree to give up one thing that didn't belong to you for one thing that did?

A. Because real estate, if worth its value, was regarded as good as a man's paper.

Q. You agreed to give up this certificate of deposit for 5,000 dollars?

A. Yes, sir.

Q. I thought the property was due to you?

A. It was, and I hold a certificate of deposit as against it.

Q. Now when you get a deed of this property you have got to give up the certificate of deposit?

A. If the property should be deeded to me as it then stood I should be holden for it. I should do it, because I had given my word for it, although there are no papers that bind me to do it.

Q. Why would you give him six thousand dollars for a thing that already belongs to you?

(No answer.)

Q. Is that all that you agreed to give him?

A. I have explained that.

Q. Have you anything further to explain about it?

A. I will explain it over if you wish me.

Q. I understand it. You agreed to give him a certificate of deposit if he made that deed; that is what you agreed to do.

A. I held that certificate with the understanding with Mr. McDonald that I would surrender it when they made me a deed of the property. I cared not whether it went into Edward E. Fuller's hands, or whose, provided the property was deeded as it then stood.

78 Q. That was to be the consideration to Edward E. Fuller?

A. Yes, sir.

Q. Was anything else contained in that agreement?

A. There was not.

Q. You were to just give up this certificate of deposit?

A. That was all.

COUNSEL. Yes, sir, that is all right; I understand you. Now I have got the Kansas City property explained. This steamboat stock; you put that in did you?

A. I did, sir.

Q. That came through Perry Fuller and Co.?

A. It came from Alexander McDonald for Perry Fuller and Co., of which Alexander McDonald was one of the partners.

Q. Now, here is property in Lawrence, Kansas, that you held on assignment from Perry Fuller. Have you got that assignment?

A. The copy of it is on file, I think.

Q. What time was that that that was made?

A. That was made to me, I think, sometime either in July or August, I would not be positive which; but it was for money I loaned him while there in New York—loaned him to help him pay his current expenses while he was prosecuting the suit against Stettor and Brothers.

Q. You loaned him money in New York?

A. I loaned him money in New York.

Q. How much?

A. The obligation was given to me to cover two thousand dollars, and seventeen hundred dollars covered the principal and interest of
79 money which he had borrowed of M. G. Coffin, of Lawrence, which was to be cancelled when this mortgage was turned over to me. He had deposited it with Mr. Coffin as collateral security for this amount of money. One, I think, was for eleven hundred dollars and the other for five hundred dollars; and the interest and altogether was about seventeen hundred dollars. We then figured up to see what mortgage and the interest upon the mortgage stood at that time, and it figured up about twenty-eight hundred dollars. I assumed to pay Coffin the amount he had borrowed of him, and gave him two thousand dollars cash; and if he needed anything more than that I would count it in, because he and I were both at sea as to how we stood.

Q. How did you pay it to Perry Fuller?

A. I gave him cash at times.

Q. How much?

A. Two thousand dollars at different times.

Q. State to the jury what sums, and the dates. Have you got a memorandum of them?

A. No, sir, I have not; but I can come pretty near to it. I gave him fifteen hundred in cash; I cannot just remember exactly the date of it.

Q. About the date?

A. Sometime along in August. I should think, like as not, somewhere about the 6th or 7th of August; I can't tell exactly the day.

Q. How did you pay him the balance?

A. I gave him two checks, I think; one he wanted to use at such a time and another at such a time, and they were not dated at the same date. I think, maybe, they were dated four or five days apart,
80 the one he wanted to use last, and one of them, as near as I can remember, was for 240 or 245 dollars. The other was *from* 260 or 250, somewhere along there.

Q. What bank?

A. The Importers and Traders' Bank, New York.

Q. Did you take an assignment of the mortgage?

A. I did.

Q. Have you got it?

A. I have.

Q. Produce it if you please?

(Paper produced.)

Q. That is it, is it?

A. That is it.

Mr. HENDERSON. We will consider it in evidence. You will get the paper back again.

The WITNESS. You have got a copy of that that has been sworn to.

Mr. HENDERSON. I see this is dated July 24th.

The WITNESS. That is the time.

Q. It was assigned to you before you paid the money then; you say the first payment was about the 10th or 15th of August?

The WITNESS. How is that?

Mr. HENDERSON. It was assigned to you before you paid the money.

A. Oh, no, it was not—if you examine in the month I gave it. I am not positive about the month. The paper shows that.

Q. You drew two checks on the Importers and Traders' Bank, didn't you?

A. Yes, sir; they will state what they are. I do not remember.

81 Q. How long did you pay the cash before you paid the checks? State if you can.

A. I can't remember, sir; I gave them the money.

Q. Attached to your deposition there are some checks. I see a check drawn July 23rd, "Pay to Fuller two hundred and fifty dollars." What is that for—on the Importers and Traders' Bank, in 1869, that I am speaking of?

The WITNESS. The amount was 250, was it?

Mr. HENDERSON. Yes.

A. As I said before, I do not remember precisely the amount that formed this, the five hundred dollars; I do not know whether it was half and half, or not.

Q. Here is one, July 29th, 1869, "Pay Fuller & Co., one hundred and sixty dollars;" what is that for?

A. Either for money that formed a part of that, or for amounts I loaned him. I loaned him several amounts of money; some he returned and some he did not.

Q. August 16th, 1869, you drew a check of $675 in favor of Fuller & Co?

A. That was loaned.

Q. Did you take any security for it?

A. No, sir; none at all.

Q. That is about the time you instituted that suit against Perry Fuller & Co.; when you were so anxious about it?

A. That all may be.

Q. How do you account for that?

A. I had my own way of managing the matter.

82 Q. How do you account for your uneasiness when you loaned him money in this way? You loaned him $250 in cash, but you took no security for it.

A. I have got the security there.

Q. What?

A. The assignment of a mortgage of property worth about eight or ten thousand dollars.

Q. He owed you $23,000 by this transaction?

A. Yes, sir.

Q. Why did you pay Perry Fuller for a mortgage already in your hands, assigned to you, when he owed you $23,000, and you were so uneasy?

A. If it even occurred at the same time it may have been from his urgent necessities and the assurances he gave me that he would treat me right. I did a great many things for him that I would not have done for any other living man.

Q. Why?

A. Because I had confidence in the man.

Q. When did you see him then?

A. Simply because I got uneasy. I was easy and then I was not easy.

Q. Then the mortgages which you turned over to Buckley and Co., also came through Perry Fuller & Co.; this mortgage on the Lawrence property?

A. You have it in your hands, sir.

Q. I want you to say to the jury whether you got it from Perry Fuller & Co.—there is the paper. Did you or did you not?

A. I got that paper from him, and that is the instrument itself.

83 Q. Did you turn it over to Buckley, Sheldon & Co., for goods?

A. No, sir; it is in my hands.

Q. Did not you put it in that list?

A. I did; I pledged it. I agreed that the proceeds derived from that should go into my business.

Mr. HENDERSON. I understand you; this is a part of the pledge you made to Buckley, Sheldon & Co., to purchase goods?

A. Yes, sir.

Q. You got it from Perry Fuller & Co.; you got the Kansas property and steamboat stock from Perry Fuller & Co., all of it?

A. Yes, sir.

Q. Now I find there is in the statement, you say, cash, between this and the first of December, ten thousand dollars; now you do not mean to say you had the cash, you mean to say you had securities upon which you meant to realize cash?

The WITNESS. What is the question?

Mr. HENDERSON. You do not mean to say that you had that much cash in your hands when you bought goods, because you did not pay a cent for that; you did not pay Buckley, did you?

A. Yes, sir; I did.

Q. At that time?

A. Yes, sir.

Q. How much?

A. Some twenty-five hundred dollars.

Q. At the time you purchased the goods?

A. Yes, sir.

Q. What do you call at the time of the purchase?

A. I paid him at the time I was down in New York. I was

84 for 12 days, perhaps, buying goods, and I paid him during that time. And I was all the while, when I started in, engaged in business during the time I bought goods. It is during the time I handed him over this money and notes that he collected for me.

Q. What was the amount, cash, purchased of Buckley, Sheldon & Co.?

A. Somewhere in the region of ten thousand dollars.

Q. 10,319?

A. I should say it was about that.

Q. Did you give him cash, or notes including the interest?

A. I gave him pretty short notes for it, I remember.

Q. Did not you give him three notes for $4,438 13?

A. I did.

Q. Now if you will take the $4,438 13 and the interest at two and a half per cent. it makes the amount exactly; and you did not pay him anything?

A. No; I did not pay him anything; you say I did not.

Q. Well, do you say so?

A. No, sir; I say I did not.

Q. Did you state in your deposition that you did not pay him anything?

A. Not for bills payable; but I paid between somewhere in the region of $2,500.

Q. During the purchase?

A. During the time I was in New York and before I left, including the purchase.

Q. What time were the payments to Mr. Buckley?

85 A. I could tell by referring to some books.

Q. Refer to it if you please.

A. I gave him for a cash bill one note due on the first of October, for $3,448 14; one due on the 15th of October for the same amount: one due the first of November for the same amount, making $10,344 43.

Q. Now, if you paid interest on it at two and one-half per cent. it would amount to exactly the precise amount; therefore you paid no money, but gave your notes for the cash purchase?

A. I say here I gave these notes as specified; these are the notes I gave.

Q. Don't that include the cash purchase?

A. This is the cash purchase; but I gave notes for the cash purchase instead of paying for them.

Q. Then you did not pay any cash?

A. I did pay, and it is credited to me on the books.

By the COURT. Is that cash payment in addition to the notes?

A. Oh, yes, sir. It does not enter into this; it is neither credited on the notes, nor nothing of the kind; but it is just to my credit.

By Mr. HENDERSON. You paid to Buckley, Sheldon & Co., which is credited on their invoice, two thousand dollars, didn't you?

A. No, sir; I did not.

Q. What did you do?

A. I have told my story.

Q. You are satisfied with it?

A. I am.

Q. You gave notes for the entire cash purchase that you made of Buckley, Sheldon & Co.?

A. I gave cash for all the goods I bought of Buckley, Sheldon

86 & Co. the same as though I had not paid him a cent.

Q. Then what?

A. I paid him. I handed him over some notes for *for* me; I think somewhere in the region of about 2,500 dollars, & he gave me credit for it.

Q. Why didn't you state that at first? You would have saved a great deal of time. Do you call notes cash?

A. They were cash to me.

Q. Did he take them as so much, or did he credit you with so much on the note?

A. He credited me with the full face of it.

Q. What time did he get the money on them?

A. I can't remember the precise time they fell due.

Q. You are certain he credited you with the amount on the back of the notes?

A. On the back? I didn't say so. I don't know that he has credited a dollar on the notes.

Q. What notes did you give him?

A. I gave him my individual notes.

Q. What notes did you sell to him, which you now call cash? You say you made him a cash payment, and now you say it is a note; now what note?

A. Simply because I got uneasy. I was easy and then I was not easy.

Q. Then the mortgages which you turned over to Buckley and Co., also came through Perry Fuller & Co.; this mortgage on the Lawrence property?

A. You have it in your hands, sir.

Q. I want you to say to the jury whether you got it from Perry Fuller & Co.—there is the paper. Did you or did you not?

A. I got that paper from him, and that is the instrument itself.

83 Q. Did you turn it over to Buckley, Sheldon & Co., for goods?

A. No, sir; it is in my hands.

Q. Did not you put it in that list?

A. I did; I pledged it. I agreed that the proceeds derived from that should go into my business.

Mr. HENDERSON. I understand you; this is a part of the pledge you made to Buckley, Sheldon & Co., to purchase goods?

A. Yes, sir.

Q. You got it from Perry Fuller & Co.; you got the Kansas property and steamboat stock from Perry Fuller & Co., all of it?

A. Yes, sir.

Q. Now I find there is in the statement, you say, cash, between this and the first of December, ten thousand dollars; now you do not mean to say you had the cash, you mean to say you had securities upon which you meant to realize cash?

The WITNESS. What is the question?

Mr. HENDERSON. You do not mean to say that you had that much cash in your hands when you bought goods, because you did not pay a cent for that; you did not pay Buckley, did you?

A. Yes, sir; I did.

Q. At that time?

A. Yes, sir.

Q. How much?

A. Some twenty-five hundred dollars.

Q. At the time you purchased the goods?

A. Yes, sir.

Q. What do you call at the time of the purchase?

A. I paid him at the time I was down in New York. I was

84 for 12 days, perhaps, buying goods, and I paid him during that time. And I was all the while, when I started in, engaged in business during the time I bought goods. It is during the time I handed him over this money and notes that he collected for me.

Q. What was the amount, cash, purchased of Buckley, Sheldon & Co.?

A. Somewhere in the region of ten thousand dollars.

Q. 10,319?

A. I should say it was about that.

Q. Did you give him cash, or notes including the interest?

A. I gave him pretty short notes for it, I remember.

Q. Did not you give him three notes for $4,438 13?

A. I did.

Q. Now if you will take the $4,438 13 and the interest at two and a half per cent. it makes the amount exactly; and you did not pay him anything?

A. No; I did not pay him anything; you say I did not.

Q. Well, do you say so?

A. No, sir; I say I did not.

Q. Did you state in your deposition that you did not pay him anything?

A. Not for bills payable; but I paid between somewhere in the region of $2,500.

Q. During the purchase?

A. During the time I was in New York and before I left, including the purchase.

Q. What time were the payments to Mr. Buckley?

85 A. I could tell by referring to some books.

Q. Refer to it if you please.

A. I gave him for a cash bill one note due on the first of October, for $3,448 14; one due on the 15th of October for the same amount: one due the first of November for the same amount, making $10,344 43.

Q. Now, if you paid interest on it at two and one-half per cent. it would amount to exactly the precise amount; therefore you paid no money, but gave your notes for the cash purchase?

A. I say here I gave these notes as specified; these are the notes I gave.

Q. Don't that include the cash purchase?

A. This is the cash purchase; but I gave notes for the cash purchase instead of paying for them.

Q. Then you did not pay any cash?

A. I did pay, and it is credited to me on the books.

By the COURT. Is that cash payment in addition to the notes?

A. Oh, yes, sir. It does not enter into this; it is neither credited on the notes, nor nothing of the kind; but it is just to my credit.

By Mr. HENDERSON. You paid to Buckley, Sheldon & Co., which is credited on their invoice, two thousand dollars, didn't you?

A. No, sir; I did not.

Q. What did you do?

A. I have told my story.

Q. You are satisfied with it?

A. I am.

Q. You gave notes for the entire cash purchase that you made of Buckley, Sheldon & Co.?

A. I gave cash for all the goods I bought of Buckley, Sheldon

86 & Co. the same as though I had not paid him a cent.

Q. Then what?

A. I paid him. I handed him over some notes for *for* me; I think somewhere in the region of about 2,500 dollars, & he gave me credit for it.

Q. Why didn't you state that at first? You would have saved a great deal of time. Do you call notes cash?

A. They were cash to me.

Q. Did he take them as so much, or did he credit you with so much on the note?

A. He credited me with the full face of it.

Q. What time did he get the money on them?

A. I can't remember the precise time they fell due.

Q. You are certain he credited you with the amount on the back of the notes?

A. On the back? I didn't say so. I don't know that he has credited a dollar on the notes.

Q. What notes did you give him?

A. I gave him my individual notes.

Q. What notes did you sell to him, which you now call cash? You say you made him a cash payment, and now you say it is a note; now what note?

A. I think when I came away from there I had somewhere in the region of thirteen or fourteen hundred dollars, but I went and drew it out of the bank and handed him that, & gave him also notes to the amount of 1,267 dollars, as near as I can remember.

Q. What notes?

87 A. Notes I had discounted belonging to myself and discounted for Perry Fuller & Co.

Q. Whose notes were these? Who executed them?

A. I think the notes were made by a man named Burkhorn, and endorsed by William Gibson, 13th st. & Broadway.

Q. How did you get them?

A. I discounted them; gave the money for them.

Q. To whom?

A. To Mr. De Wolf.

Q. A partner of Perry Fuller?

A. He was.

Q. When did you do that?

A. I think it was sometime along about the middle of May that I got these notes.

Q. How much were they? Were there two notes of Burkhorn's?

A. No; more than that. I should say three—may have been more. I don't remember precisely now the number.

Q. What did you give for them?

A. Gave cash for them.

Q. To whom?

A. I paid it to the order of F. A. De Wolf.

Q. To whom?

A. One of them I paid to Chase & Co., I think the name was.

Q. Did you make a check payable to Chase & Co.?

A. Yes, sir.

Q. Why?

A. Because he requested me to do so.

Q. Who?

88 A. F. A. De Wolf.

Q. You gave that much for the notes, did you?

A. That is part of what I gave.

Q. What else did you give?

A. I gave money for the balance.

Q. How much?

A. I can't tell you the precise amount. I gave the full amount less the discount which I took off.

Q. How much did these notes amount to?

A. I can't remember the precise amount; I think somewhere in the region of 1,267 dollars. That is the amount in my mind.

Q. These are the notes handed to Buckley, Sheldon & Co.?

A. Yes, sir.

Q. They came from Perry Fuller to you?

A. Yes, sir.

Q. And about the middle of May you paid F. A. De Wolf, the partner of Perry Fuller, for these notes?

A. I did.

Q. How much—checks or money?

A. I paid him a balance there was on it. I don't remember precisely now what amount.

Q. Didn't you hold the certificate of Perry Fuller for that 1,200 dollars?

WITNESS. All right. May you can explain the inconsistency of my operations in granting an indulgence to him.

Q. I don't undertake to do that. I want to know how you explain it.

A. That puts me in mind—there is a paper right here that I
89 want the privilege of reading with regard to the subject.

Q. Signed by you or whom?

A. Signed by one of the partners of Perry Fuller & Co.

Mr. HENDERSON. You can show it to me & let me see it.

WITNESS. (Handing paper to counsel.) There is a schedule of the notes that were handed to me, which I discounted.

Q. This is the paper that you allude to?

A. Yes, sir; that will give the information—it answers the question. I couldn't remember the items.

Q. This is for $16,521 00. These are the notes you turned over to Buckley, Sheldon & Co.?

A. Those are the notes I discounted. I didn't turn over all those, I guess.

Q. You discounted them at what bank?

A. At no bank. I discounted them myself.

Q. What did you give for them?

A. I paid one item that he asked me to pay of 1,200 dollars.

Q. What else?

A. I paid him the balance.

Q. To whom?

A. F. A. De Wolf, partner of Perry Fuller & Co. I can't tell you exactly how much. I paid him all he claimed.

Q. Did you pay him the cash value?

A. I paid him all he claimed.

Q. How much did he claim?

A. He claimed the difference between what he counted the worth of the notes & his necessity for money.

Q. Why didn't he take a check payable to himself?

90 A. Ask him the question; I can't answer.

Q. What other notes did he give you? You say you paid him a thousand dollars in addition to that money.

A. Who?

Q. What other notes did De Wolf give you?

A. I don't understand.

Q. Did you get any other notes about this time from De Wolf?

A. About that time there?

Q. Yes; or any other time between that and the time you purchased the goods—this May lot.

A. Not between the time I purchased the goods and that letter. You asked me if I got any more notes. I did. They are right here. I specified the notes I got *I got.* I got 33, 34, or 3600 dollars from De Wolf—whatever is on the books. These he turned to me. A part of them are the list that came out of that class of notes. Then, I think, he stated this was another lot—a lot I bought and others he turned over to me in settlement.

Q. When you bought these notes the firm of Perry *Taylor* & Co. owed you six thousand dollars on a certificate of deposit, and owed you much more provided that stock turned over to you wasn't good?

A. Yes, sir.

Q. Why did you not take the notes instead of discounting them?

A. For the simple reason, as I have stated, they wanted to use the money badly. He states in that letter what he wants and how his

necessities were pressing, and I did it for him to accom'odate him. As I said before, I did for him what I wouldn't have done for any
91 other living man. I had oftentimes money enough in my hands to pay myself, if I felt disposed to have done so, but I don't do business that way.

Q. You were acting under a power of attorney at the time you brought this suit, were you not?

A. The power of attorney never was annulled. I never was notified that it was not in force; but since I ceased to clerk for him it had died out.

Q. These cash items you turned over as a part of your assets to Buckley, Sheldon & Co., consisted of these notes?

A. No, sir.

Q. What?

A. Of cash & mortgages I had, that I could lay my finger on the moment I called on a man and said I wanted the money.

Q. State what they were.

A. There wasn't very much of them; most of them were in cash. I remember two thousand dollars I had against a brother-in-law in Crestlin', Ohio, executed in Crestlin', and another brother-in-law lived in Mansfield, Ohio. Either was perfectly able to draw their check any time I called on them for it.

Q. Will you specify now what that ten thousand dollars consisted of?

A. That was two thousand dollars—that note at Crestline.

Q. Who was it upon?

A. Jenner was the name.

Q. How much was it?

A. One was for 1,600 dollars & another for 400, making 2,000 in all. One was secured by a bond and mortgage.

92 Q. What else?

A. One was four hundred dollars against A. C. Hill, in Fairport—a man worth 50,000 dollars.

Q. Who else?

A. One note, I think, was for a thousand dollars, against E. A. Smith, the proprietor of the Eldridge House, Lawrence, Kansas, was for the balance of the proceeds that he owed me for the payment of my interest in the house; the balance of it I had cash in the bank. That is about the substance of it. The whole of it was available. I could lay my hands on it if I wanted to, to convert ten thousand out of it in five days.

Q. You have only mentioned thirty-four hundred out of the ten thousand. Now tell me where you had the cash for the balance. There is sixty-six hundred more. What did that balance consist of?

A. Cash, as near as I can remember.

Q. Where did you have it?

A. Various places. Part of it I had in the First National Bank of Lawrence; part of it I had in the National Bank of Rochester, New York; and I almost forgot whether I then had a balance with Jay Cooke & Co., in Washington or not. I remember I had had there about $2,500, and if they had taken pains to look at the books they could see this.

Q. That is thrown in. I simply ask you what the balance of that money consisted of. Will you tell me how much you had in the bank at Rochester?

93 (No answer.)

Q. How much did you have in the bank, on deposit, a' Rochester? State to the jury, as near as you can.

A. After taking out these notes that I have specified here of $2,000, and $1,000, and $400, the balance of it I had in cash. I had about ten thousand two hundred and some odd dollars, when I came to figure the thing up, when I was called on. I give this in round numbers as near as I can—about the balance I had in the banks.

Q. It is easy for you to state. You cannot have a large deposit account without knowing about what it is.

A. I had a portion of the money in the Importers and Traders' National Bank, but I can't give you specifically the balance I had in each bank.

Q. You think you had in bank $6,600?

A. I don't think there was any time I did not have that much money. It was a very close thing if my account was drawn less than ten thousand at any time.

Q. How much did you say you had at the First National Bank, in Lawrence?

A. I can't remember exactly.

Q. As near as you can?

A. I should think probably about $4,500 cash in there, and, I should think, maybe, 2,500 to 3,000 dollars in the Importers and Traders'
94 Bank of New York—somewhere about 2,500. I can't remember precisely the balance in each one of these banks.

How much did you have in the Rochester Bank?

A. I do not remember just exactly what the amount was. Sometimes I had quite a balance there, sometimes had it drawn down some. I kept it there for my own convenience. I wanted a place where, if I wanted the money, I could step into the bank, and draw it.

Q. When had you been in Lawrence before that?

A. I had not been there since 1868—since April, 1868.

Q. What were you doing with an account in the Lawrence Bank?

A. Because I owned property there.

Q. How did you keep that account in the Lawrence Bank?

A. The easiest thing in the world.

Q. Did you draw checks upon it?

A. Yes, sir.

Q. Where had you been living?

A. Anywhere I was of a mind to—sometimes Washington, sometimes Fairport, sometimes one place, and sometimes another.

Q. Did they pay you interest on the deposit there?

A. Not much; I think about 7 per cent.

Q. How long had you kept that deposit there?

A. I had a deposit there, I think—I kept an account running right along since 1867 there.

Q. You had not been there at all?

95 A. Oh, yes; I used to live there.

Q. But you had not lived there during the time this account was running?

A. No, not always.

Q. How did that account accrue in your favor at the Lawrence Bank?

A. For collections they were making.

Q. What notes did you send to them?

A. I sent notes, I think, from E. A. Smith, the proprietor of the Eldridge House, whom I sold out to. I sold out to him on time.

Q. Who executed these notes?

A. E. A. Smith.

Q. Were they paid?
A. They were paid in bank.
Q. And were there at the time?
A. And were there at the time.
Q. I thought you told Buckley you held the notes on Smith?
A. Very well; they were in bank.
Q. Notes in bank, or the money?
A. The notes in bank; the notes were not due.
Q. Then you did not have the money?
A. That is not the question you put. You asked me if I had any collections there.
Q. I am talking now about the money?
A. My collections I made there.
Q. Collections of what?
A. Collections of notes; I had various notes.
Q. What notes; you certainly know some of the notes?
96 A. I think I sent him over about $3,700 in notes at one time. I almost forget what time it was. I think I had the notes described; I will give you the number.
Q. Let us have them.
A. Two notes of , $250 each; two notes of Rankin, $273 each; one note of Rankin, $123; note of L. E. Hoyt, $271; another Hoyt, $120; another of Reiss, $180; one note of Bredell, $400. All these were in the hands of the First National Bank.
Q. Where did you get these notes?
A. I got them from Perry Fuller and Co., in their settlement with me, on the 20th day of April, 1868, before I made the settlement with Alexander McDonald, in Washington.
Q. All the notes you sent to the bank at Lawrence came through Perry Fuller & Co., that created that amount?
A. No, sir.
Q. What note did you send there that did not?
A. I had notes from E. A. Smith that were paid there for my interest in the Eldridge House.
Q. How much was that; a thousand dollars, you say?
A. You say I said a thousand?
Q. You said a thousand.
A. I said it was a thousand.
Q. The note of E. A. Smith?
A. That is one of them.
Q. What was the other?
A. I think there was four notes for a thousand dollars, and one, I think, was for eight hundred.
97 Q. Were they all uncollected at that time?
A. No, sir; a part of them had been collected by the First National Bank, at Lawrence, and the proceeds laid in the bank to my credit.
Q. How many of them had been collected?
A. I do not remember precisely, now.
Q. Perry Fuller and Co. gave you power of attorney to collect and transact business for them?
A. Very well.
Q. Did they turn over any notes for you to collect?
A. They handed me these books to collect accounts.
Q. The books were yours?
A. I was book-keeper for them. They authorized me to transact any

and all business necessary for the settlement of these accounts, and I did so. They gave me full power to act in their business, and the cause of it was this: They had executed a power of attorney to an attorney they had in Lawrence, where they had a large amount of collections, and it became necessary that the power of attorney made to me should supercede all others, so that I could take any paper out of other hands that I saw fit to do, and settle for it.

Q. You had entire control of their paper?

A. Yes, sir.

Q. Had you one cent in the National Bank at Lawrence, except what came through money and property of Perry Fuller & Co.; had you a dollar that did not belong to them?

(No answer.)

98 Q. Had you?

A. Yes, sir.

Q. How much?

A. My answers are made there.

Q. Will you please state to the jury; now just recapitulate what was done in the ten thousand exhibit that you made of your assets, to Mr. Buckley. You can do it now in a few minutes. Itemize to the jury what it consisted of.

A. Two thousand dollars notes I held against my brother-in-law, or two or three of them together, in Crestline and Mansfield, Ohio. Four hundred dollars I held against A. C. Hill, of Fairport. I think, perhaps, a thousand dollars of E. A. Smith's *not* still uncollected. It seems, from my recollection now, there was but one note that remained unpaid. The balance of it I had in bank.

Q. Is that all of it?

A. I have made my statement.

Q. Is that all?

A. The balance was cash in bank to my credit from collections which had been paid.

Q. Forty-five hundred dollars in the National Bank of Lawrence?

A. I should judge it was about that. And in the Importers and Traders' Bank, twenty-five hundred, I should say, was about the balance I had. I think I had access to the account current which, I think, is on file here.

Q. Was not that thirteen hundred dollars that you drew yourself or drew a check on it?

99 The WITNESS. When?

Mr. HENDERSON. In August.

The WITNESS. I am going to confine myself to dates now. I want reference to the account current furnished me by the bank as the balance in the bank. The original papers are here on file; that is what I want. (Papers presented to witness.) These papers here are copies of the original $1,882. That shows what it was on the 21st of August.

Q. Then you are mistaken in regard to the amount you had there?

A. Oh, well, I know what I had. I know I had over ten thousand dollars that was available. I felt so satisfied with it, and I am satisfied now that if I had been called upon to furnish it I could realize ten thousand dollars in two days' time.

Q. Did you deliver to Buckley the Jenner note?

A. No, sir.

Q. Did you deliver him a note on Jenner Brothers?

A. No, sir.

Q. Did you give him the note of E. A. Smith?

A. No, sir.
Q. Did you give him the Bredell note?
A. No, sir.
Q. Or the Rankin notes?
A. No, sir.
Q. Or the Reiss notes?
A. No, sir.
100 Q. Where were they?
A. They were deposited in the First National Bank at Lawrence for collection. I think there *is* some papers on file here with a schedule of them.
Q. Where did you first become acquainted with Fuller?
A. In the Indian Department.
Q. What year?
A. 1861, I think.
Q. Where were you then?
A. I was in the finance division, Indian Bureau.
Q. At Washington?
A. At Washington.
Q. In what capacity?
A. Clerk.
Q. How much were you worth then?
A. How much money?
Q. Yes.
A. I do not remember exactly.
Q. A thousand dollars?
A. I should say so.
Q. 1,500?
A. I should say so.
Q. Two thousand?
A. I should say so.
Q. Any more than that?
A. I should say so.
Q. How much?
A. I do not remember exactly what amount.
101 Q. State what you think.
A. Oh, not very heavy.
Q. Well, state somewhere in the neighborhood of it.
A. Probably it was not over five thousand dollars.
Q. Were you worth any more in 1865? When did you go West?
A. I went West in 1665.
Q. How did you go—in what capacity?
A. As an officer of the Government.
Q. There are so many officers of the Government? State to the jury what particular office you had.
A. I held the position of chief clerk of the superintendent of Indian affairs.
Q. Who was the superintendent?
A. Mr. Sells.
Q. Elijah Sells?
A. Yes. sir.
Q. Where located?
A. Lawrence.
Q. Who paid your salary?
A. The Indian Department.
Q. How much—what was it?

A. I think, as near as I can remember, $1,500, about.
Q. How much of a family had you?
A. Wife and daughter.
Q. How old was your daughter when you went out there?
A. She was born in 1849, and I went there in 1865.
Q. 16 years old. Did you keep house out there?
A. In a way.
102 Q. Did you live in Lawrence?
A. Yes, sir.
Q. How much were you worth when you went out there—when you left Washington?
A. I don't remember exactly.
Q. State how much.
A. I did not go to work and invoice myself very heavy.
Q. How much do you think?
A. I had plenty to get along with.
A JUROR. I can't hear you.
WITNESS. It would be very difficult for me to give the precise amount; it is not a matter of importance enough to me to retain it in my memory. I can come within ten thousand dollars of it.
Q. When you went out?
A. Yes, sir.
Q. How much?
A. I should say I was not worth over $10,000.
Q. Were you worth 5,000?
A. I should say I was.
Q. Were you worth more?
A. I can't remember exactly.
Q. Do you say now you believe you were worth more?
A. I do not say it; I can't remember.
Q. Then you do not think you were worth more than that?
A. I can't remember.
Q. How long did you stay there? Have not you already stated
103 in your deposition that you were not worth exceeding $45,000 when you went out there?
A. I do not remember.
Q. If you so stated it is true, is it not?
A. I do not remember what I have stated.
Q. What do you think now?
A. What I think and what the facts are may be two different things. I know to-day that I was worth $500 more than I thought I was a year ago.
Q. What do you now think you were then worth?
A. Well, I should say it was not far from that region.
Q. $4,500?
A. $4,500 or $5,000.
Q. How long did you stay at Lawrence?
A. I staid there from the spring of 1865 to about the first of September, 1866.
Q. You were there about 18 months?
A. Yes, sir.
Q. How long did you say you were in the employ of Mr. Sells?
A. I was in Sells's employ I think it was somewhere about the 2d of May,—may be the 4th of May—1865, until the close of his administration. I think it was the 1st October, 1866, he offered his resignation.
Q. What time in 1866 did you leave Kansas?

A. I didn't leave Kansas until some time in December.

Q. These certificates of deposit were all dated prior to the 1st December, 1866, were they not, that you mention?

A. Prior to the 1st December?

Q. Yes.

104 A. I think they were, all but one.

Q. Which one was that—for how much?

A. I will have to look and see; I can't *cant* to mind now exactly.

Q. You didn't make any deposits except in Kansas, did you?

A. I don't think I did. Well, one of them was made in New York.

Q. How much was that?

A. 2,750 dollars, made on the 27th December, designed to be the last of the month, but it kind of seems to me it was along about the middle of December.

Q. Of what year?

A. 1866. I remember it was in the N. Y. Nat'l Exch'g Bank. I gave it to him.

Q. What do you make the gross amount of these certificates of deposit?

A. 15,300 dollars. That was without any interest.

Q. Did you have any other property then?

A. At what time?

Q. At that time—1866—in fall of 1866—December, 1866.

A. Yes.

Q. What else did you have?

A. I owned this property in Fairport; I had considerable personal property besides.

Q. What was it.

A. I don't know whether I can enumerate them all, or even their value; some I paid one way & some another.

Q. How much were you worth in December, 1866?

A. Well, I felt that, if it was necessary, I could handle 50,000 or 60,000 dollars.

105 Q. You had made that upon a salary of 1,500 dollars a year in 18 months except 4,500 dollars.

A. I don't know that that is exactly the amount.

Q. You think that is the amount?

A. I said it was something about that; maybe 5,000, or such a matter, maybe a little more. I didn't invoice myself very heavy, as I said before.

Q. How did you make that money?

A. In a variety of ways.

Q. State to the jury how you made 50,000 or 60,000 dollars in 18 months, at a salary of $1,500 a year.

A. No, we don't make money that way. $1,500 a year don't make that much money. That isn't the way it is made. It ain't made by salary.

Q. How did you make it?

WITNESS. I always supposed that that was a matter that belonged to my own private affairs. I don't know whether I am under instructions here to answer such questions as that or not. If the court demands it of me, I shall answer it, but I don't see that it enters into any matters here.

(P'ff's c's'l objects to the question.)

Justice DILLON (presiding.) The question arises in a very peculiar way. In the first place this is a question substantially of fraud. Every lawyer

or judge knows how difficult it is to limit the range of inquiry. In the next place the witness is a party, and we will have, perhaps, to allow a little range in that case, than if he were a third person.

106 We think that, within a reasonable limit—not too much accumulation—that you may show, not by an inquisitorial examination into collateral matters, which no man has a right to do fully, unless it is absolutely relevant to the point of inquiry in the case, but you may show, if you can, those transactions in connection with Fuller or Fuller & Co., which you claim in this suit that he is worth—that you have an interest in it, & we will endeavor, if you should press it beyond that, to restrict it.

Mr. HENDERSON. We don't desire to do so, sir; we don't desire to take up the time of the court. I ask him how he made that amount of money—between 50,000 & 60,000 dollars during the eighteen months.

The C'T. He may answer that question.

WITNESS. I will qualify myself, then. You asked me how much I made. I said I felt I could command 50,000 or 60,000 dollars. Now I don't say that I had that amount in hand, but I could command it; and I feel at liberty to explain myself. If I had 30,000 dollars cash, I could command 60,000. That was my language to the court.

Q. I want an answer to my question. How much were you worth at that time in December, 1866?

A. I didn't invoice myself positively, so as to be able to now give the precise data.

Q. Haven't you stated in your deposition here that you were worth between 50,000 & 60,000 dollars in so many words?

A. I don't remember that I so stated that.

107 Q. State whether you did or not; what is your recollection?

A. I have said I don't remember whether I stated it.

The COURT. If he does not recollect it, if it is in writing, show it to him, & ask him if he didn't give that answer.

Mr. HENDERSON. Mr. Dillon is searching for it. In the meantime I will proceed with another point.

Q. Where did you go from Lawrence?

A. I went to New York.

Q. What time did you arrive in New York?

A. I should think perhaps before the 10th December, 1866.

Q. How long did you remain there?

A. Not more than a day or so.

Q. Where then did you go?

A. I went to Washington.

Q. What did you do there?

A. I did a variety of things.

A. I mean employment, Mr. Hayes. You understand what I mean.

A. I was in no one's employment directly. I was transacting business for parties that had called on me to transact business for them.

Q. Did you receive any salary?

A. I don't know whether you call it salary. I received pay for what I did.

Q. From whom?

A. Men I did business for.

Q. Where did you do business?

A. I did business before the Indian Department.

108 Q. How long were you there?

A. The first time I think I remained there until about Christmas, 1866; then I went back to New York?

Q. What did you do there?

A. I stopped there for convenience sake; I then went from there to Fairport, and staid there a few days, and then returned to New York, and then returned to Washington.

Q. Were you engaged in any business during that time?

A. I was transacting business with other parties.

Q. What sort of business?

A. One of the duties that I had on my hands was to settle the accounts of one of the Indian agents who had been a large disburser of property for account of the Government for the two years prior. Mr. Harland was his name, James Harland.

Q. Where was he?

A. He was an Indian agent for the Cherokee Indians at Fort Gibson. (Paper handed witness.)

Q. Is that your signature?

A. That is my signature.

Q. This deposition reads as follows: "I left Washington for Kansas, in May, 1865. I had accumulated, in addition to the two thousand dollars, in the meantime, somewhere about 4,500 or 5,000 dollars. When I left Kansas in 1865, I entered into the employment of Elijah Sells, who was then superintendent of the Southern Indian Territory. At the end of that time I was worth something about 45,000 dollars."

109 WITNESS. Very well, I have sworn to it. I remember now.

Q. Do you swear to it now?

A. I swear to it now.

Q. State how you made it.

WITNESS. How much have I got to prove?

The C'T. State it in a general way.

WITNESS. When I entered the Indian service, I had been for four or five years—I had had charge of the preparing of the provisions that went before Congress, & the estimates upon which all the provisions were made. I had thoroughly booked myself up with regard to all treaty stipulations, and the provisions under the treaties, with reference to the expenditure of any money, and without being compelled to refer to them. I had them pretty clearly at the time in my head. I knew the latitude at which a man could go, and come within the purview of the provision of the statutes. That knowledge I carried with me, and when I went into the Indian service at Lawrence, several Indian agents solicited me to take charge of their entire accounts from beginning to end. I took charge of these accounts for so much. One man I charged as high as 3,500 dollars for the time I kept his accounts. I took up his accounts for the quarter prior to the time I entered there, & found the difficulties attending it, and stated to him the explanation to be made, and had his accounts prepared and transmitted to the Department for settlement. I then took the accounts in my own hands, when presented to me, and answered all the objections which could arise under

110 them, under instructions from the Department, & for which they required explanations for the expenditure of money, &c. I kept all these accounts, and they were transmitted to the Department, and every one settled in compliance with the instructions of the Department, with no difficulties attending it. In order to lay a proper foundation for my explanation, it will be necessary to go back a little. When William G. Coffin, the superintendant of Indian affairs, who was the predecessor of Mr. Sells, was in office, the management of affairs at that time were such that it had required for two years a series of explanations which, when written out, would cover a book one-third larger than

this, of explanations to the Department, in order to explain how money was expended here and there, in order to satisfy the Department, before they would pass the accounts. I have this to say. I didn't go to Washington for the purpose of working out an existence for nothing, but wherever it came within my province to do work for a man, that I had a right to do, I made him pay for it, & got my pay.

Q. That was before you went to Washington?

A. This was after I left Washington.

Q. You stated in you' deposition that you given that, in the fall of 1866 when you "left Kansas to go to Washington;" that's what you say?

A. I am talking about what I did, now. I am travelling over a period now commencing in May, 1865, up to October, 1866. You asked me how I made this money. I dropped right back there. I am telling you how I made the money. There were these Indian agents. I say one man paid me, I think, about 3,200 dollars cash. He was an Indian agent.

111 Q. How long did you keep his books?

A. I kept them, I think, the quarter before I came there; the first quarter of '60, and run through all that year, and the quarters of the next year.

Q. That was seven quarters?

A. That is eight quarters.

Q. You were there eighteen months?

A. I am stating to you what I did. I say I went there and took up his first quarter of 1865, & run through that year; that is four quarters. I settled up the accounts for the next year, that is four more, that is eight. This explanation I make to your answers to all the rest of these Indian agents.

Q. Did you get thirty-two hundred from each?

A. No, sir.

Q. Who paid you the thirty-two hundred?

A. A man that is now dead—in his grave.

Q. You are sure of that?

A. I am, for I had a notice of his death sent to me.

Q. Who was he?

A. His name was Isaac Cabmann.

Q. What agency?

A. Agent for the Choctaw and Indians.

Q. What was his salary per annum?

112 A. Fifteen hundred dollars a year.

Q. He paid you thirty-two hundred for keeping the books during the two years?

A. That is what I said.

Q. Will you state another one that paid you anything?

A. Yes, sir; I can state one. I received from James Dunn, as near as I can remember, about 1,600 or 1,800 dollars—maybe a little over. I remember he gave me one draft for a thousand dollars on Perry Fuller & Co., which they cashed on my presenting to them. He paid me other sums that he handed me the currency for.

Q. Is he living?

A. Yes, sir.

Q. Where does he live?

A. I don't know. He lives in Indianna, somewhere.

Q. How many accounts did you make out for him?

A. He was appointed to enter upon the service. I think he came in

on the second quarter of 1865, if my memory now serves me. I think he came in in the second quarter of 1865. I don't remember now who it was he succeeded.

Q. What agency?

113 A. He had the Creek Indians.

Q. He paid you eighteen hundred dollars?

A. I think it was somewhere about that. I don't remember precisely the amount. I have stated it was once or twice in my deposition there, when my memory was more vivid then with reference to it than it is now.

Q. How much did you receive from others?

A. I received several sums. I can't state now precisely the sums.

Q. Name the parties.

A. Milo Gookins, George Reynolds, George C. Snow, Henry Shankleman.

Q. How did they pay you each. In the neighborhood, how much?

A. I think Shankleman paid me at one time thirteen hundred dollars, he either paid me at another time 841 dollars, or 700 & something, and I think about two or three hundred dollars at another time; but these amounts are not clear to me now.

Q. He paid you something near $3,000?

A. No; he didn't pay me as much as that.

Q. Upwards of two thousand?

A. I think it was.

Q. What agency had he?

A. He had charge of the Wachita and the affiliated bands.

114 Q. How much did Mr. Snow pay you?

A. Mr. Snow thought he could run his own accounts, & so he attempted to do it; and after he got involved, and found he could'nt get through, he wanted me to take him up; and I told him I would fix up the accounts for him for two hundred dollars; & he gave me that. He paid me other sums at different times—paid me right down when I done the work. I think he gave me somewhere in the region of four hundred dollars.

Q. Who else?

A. It seems there were seven in all.

Q. You have given Hillman, Shankleman, & Snow.

A. Mr. Gookins only paid me a small amount—I think about—somewhere about four or five hundred dollars.

Q. Who else?

A. Harlan has'nt paid all up yet.

Q. Where does Harlan live?

A. Harlan lives at Marshall, Illinois.

Q. How much has he paid?

A. I think he paid me about somewhere in the region of about 775 dollars, but it was paid to pay my expenses. I don't regard that

115 I have received anything from him yet for the services. He has been waiting to collect some money I know about, so I am letting him run along until he gets his matters straightened out.

Q. How did you incur such an expense as that, going to his place of business?

A. Well, one thing, I staid forty-nine days. I was in Washington. I charged him for the time there, & charged him with all my expenses, and all my travelling expenses in settling up his accounts. I was bothered there considerable in trying to get the accounts taken up out of their regular order.

Q. These men were all under Mr. Sells' superintendency, and you was clerk for Sells?

A. I was clerk for Sells.

Q. They were all under him?

A. They were.

Q. The accounts had to go through his hands to Washington?

A. They had, if they felt disposed to send them there. I stated the case, where a man thought he could run it himself.

Q. It was the superintendent's business to see that the accounts were properly kept?

116 A. You will have to assume your own knowledge in regard to that matter.

Q. You don't know anything about that?

A. I do know all about it.

Q. That don't still make up the amount; how do you make the balance?

WITNESS. How much have you got down. I would like to refresh my memory. I have'nt the amounts; I would like to read it over.

(Paper handed to witness.)

A. As near as I can carry in my mind now, I think about eleven hundred dollars from Reynolds.

Q. How much does it all make?

A. This that I have got before me makes 9,778 dollars.

Q. Where is the balance—38,000 dollars?

A. I will let you go far enough, until I think it is time to make up enough to pay this bill.

Q. Which bill?

A. Enough to make up the amount. I don't know whether I am to be handled in this way or not.

Mr. VOORHEES. I understood the court to say that this enquiry might be prosecuted to ascertain whether his means were derived though Fuller & Co., &, if so, in what way & to what extent. If I understood the ruling of the court correctly—there was a deal of noise below

117 at the time—that this enquiry should be mainly directed to that point, inasmuch as it was a charge of fraud, involving these parties; that the examination should hit that range. I think the examination that has already been extended does'nt come quite within that rule. I would'nt feel like objecting at all—nor do I care now—but I would desire the counsel to be instructed by the court to direct the attention of the witness, according to the ruling of the court.

The COURT. (Judge Dillon presiding.) We take this view of it, substantially what it was before. The witness states, in general terms, that he had about five thousand dollars when he went to Kansas, and he accounts for nine or ten thousand more, but there is a large margin between that and forty-five thousand. Now it may be true, of course, that he may have bought the goods in question, without having any forty-five thousand dollars; he may have bought them on credit. It may be true that he had 45,000 dollars, & it might be true that it was acquired in a way that he doesn't like to disclose, and yet he may have had it; but it is very true that they have a right to show that since he did claim to have 40,000 or $50,000, properly of his

118 own at the time he made the purchase of these goods; they may show, if they can, by cross-examination of this witness, that he didn't have any such amount to raise the presumption that, if this property was in esse, as it seems to have been in his or Fuller's, and if not Fuller's then the purchase was made colorable in his name or Ful-

ler's name. As we said before, while it is difficult to define any, there must be some limit to the range, and the witness may answer, if he chooses, or may decline, if he chooses, to answer how he made the other. You have a right to ask it, and if he don't see fit to answer he may say so.

Ques. Do you decline answering as to how you made the balance of that money.

A. No, sir; I haven't declined to answer.

Q. State how you made it, then.

A. You will have to give me time, if I have to wade through things like these; I will claim as much time as is necessary.

Mr. HENDERSON. We are all in a hurry.

WITNESS. I can't help that.

Mr. VOORHESS. Let him have time.

The C'T. Yes; let him have time.

WITNESS. There was one branch of business of profit which entered into this, that was, perhaps, in one sense, outside of my
119 hands. It was by an arrangement I had—that he had—whereby he used money, and I authorized him to use to the extent that he wanted, and he used it in buying up Government vouchers; they were largely in circulation all along the frontier, and he was one of the parties that stood ready to buy, & I assisted him to handle them. He had been connected with the service and knew the details of the business, and I did not, and I shared share & share alike, with him in it.

Q. How much did you furnish him?

A. I furnished him at different times——

Q. How much?

A. At any one time there was no very large amount. I think, probably, as near as I can remember, it used to run something like this: it would be three or four thousand, & from that to $6,000 or $6,500; I don't think any of it reached 7,000 at a time; I think it would reach 6,500 dollars.

Q. Where did you get the money from; did you take any there?

A. No, sir; I had money in my hands, and had money I could control when I wanted it; I didn't use any Government money, and hadn't any money in my hands.

Q. Did you take any money with you?

120 A. Yes, sir.

Q. How much?

A. I don't remember what the amount was.

Q. Did you take a thousand dollars?

A. Yes, sir.

Q. Two thousand.

A. I should say so.

Q. Any more?

A. I should say so.

Q. How much?

A. I can't remember precisely.

Q. You owned the property then at Rochester; didn't you at Fairport?

A. No, I did'nt own property there then.

Q. In '65, '66?

A. O yes, in 1865 & 1866 I did,

Q. You put that down at 3,800, then, if you were worth 4,500, when you went out there, you had seven hundred more. Then you could'nt have taken but seven hundred.

A. I bought the property in Fairport, I think, in 1865.
Q. Then you owned it in 1865, when you went out?
A. I didn't own it when I went out; I think it was in the fall I bought it.
Q. Then you invested 3,800 in that?
A. No; I didn't pay that much; I valued it at that.
121 Q. Did you pay cash for it?
A. Yes, sir; I did.
Q. That took that much out of your business of $4,500.
A. No, sir; you *aint* cyphering me up exactly.
Q. To whom did you loan this money to buy Indian vouchers?
A. To a friend of mine.
Q. Who was it?
A. If the court requires, I shall tell the name—not without.
Q. You decline to answer.
A. If the court requires it I will tell it.
The COURT. If there is some reason he doesn't wish to disclose the name, the court will not oblige him to do it.
Mr. HENDERSON. This witness might answer the questions, they are very short. I feel that I am trespassing upon the time of the court, but I am trying to get thro' as fast as I can.
The COURT. He may have personal reasons that he doesn't choose to name the party; if so, I will not press him.
Mr. BROADHEAD. Suppose the man was an officer of the Government, and made himself criminally liable.
Mr. HENDERSON. Then let him state it.
122 The COURT. If there are personal reasons that the witness doesn't choose to answer, he needn't state it.
WITNESS. I prefer not to give it.
(Exception noted.)
Q. Did you have any interest in these Government vouchers?
A. I stated so.
Q. Say yea or nay. Did you have an interest in the purchase or sale of these vouchers?
A. The prin*ciple* which I loaned, and the profits I derived from it, was handed back to me.
Q. Did you make all the balance in this way?
A. In what way?
Q. Buying and selling vouchers, loaning money?
A. I made some of it in that way; I made some of it loaning money.
Q. You didn't make it all that way?
A. No, sir.
Q. How much did you make buying vouchers?
A. I can't call to mind now, exactly the amount.
Q. Two thousand.
A. I should say I did.
Q. Three thousand?
123 A. I don't know whether I can give you the precise amounts.
Q. Do you say over three?
A. As you seem to be very nice about it, I would like to get as near as I can to it.
Q. How did you make the balance, you made nine thousand from the agents, and three thousand from this source, that leaves you thirty-three thousand, how did you make the balance?
Mr. VOORHEES. Mr. Henderson assumes that he said three thousand,

but he didn't say any such thing. He didn't try to approximate 3,000 dollars.

The COURT. That will be avoided if the counsel doesn't undertake to recapitulate the statements, but puts it in the shape of an inquiry.

Q. How did you make the balance of that $45,000?

A. I will take the liberty of referring to this book to show you. Sometimes it was convenient for me to have on hand what cash I wanted. From August 13th, until November 20th, 1865, Perry Fuller & Co. paid to me on a request I made of them, for money I wanted, $1,828 07.

Q. Perry Fuller & Co.

A. Yes, sir; it was charged to me—charged up to me.

124 Q. Charged to you on the books?

A. Charged to me on the books. I will read you the items if you prefer. (reads.) "August 17th, 8 00; August 21st, 6 90; August 21st, 21 00; September 6th, 90 00; September 19th, 5 50; September 29th, 2 74."

The COURT. How long is that?

WITNESS. It will run over about eight pages.

The COURT. What is the largest item & what is the smallest?

Ans. "Oct. 5th, 500 00; Nov. 7th, 1,000 00."

Q. What are you reading; charges against you by Fuller?

A. Yes, sir; I will tell you every dollar—just where I got it. From November 25th, up to February 1st, 1865, he had paid me about 144 dollars, after giving me $1,828 07, and from February 1st to April 7th, about 309 dollars; from April 7th, up to June 13th, 1,984 dollars; from June 13th up to September 29th, about 2,900 dollars; from October 1st, 1866, up to the 20th of February, he had paid me about 7,400 dol-

125 lars—up to the 20th February, 1867; from the 20th February up to the 22d October, 1867, he paid me $6,965 71.

Q. I am not asking you about that; I am only asking you about your property up to 1866.

A. I am giving you the details of where I got my money from. I propose to give you this thing just as it is. I want you to keep track of the dates of it. I paid out in claims there what would have discounted your bill, if you had had it well endorsed. From October 28th, 1867, up to May 13th, 1868, he paid me 3,800 dollars and some balance, and from May 13th, up to April 28th, 1869, he paid me 4,540 dollars, and April 30th—these items I have been giving you as cash he paid to me—on the 30th of April when I settled up with them, they turned over to me these notes, which I have scheduled to you in my former statement to-day, $3,362 46. If you will have the goodness to cypher it up you will find the amount.

Q. How did they become indebted to you?

A. If they have got any claims against me, all that they have got to do is to present it. That is the amount they owed me; they paid me as I demanded it.

126 Q. Isn't it charged on the books?

A. It is.

Q. What did they credit you with?

A. The balance of my account.

Q. Can you state to the jury what they credited you with—you said you owed them in May, 1869, 1,300 dollars.

A. That is what they overpaid me.

Q. What did they credit you with?

A. It is so long a time—it is important to me that the dates should be kept, to know when I possessed this money.

Q. Now I simply ask you what Perry Fuller & Co. credited you?

A. They credited me with so many items that constituted my account, that it would take very long to run through it.

Q. Do your mean by your answer to convey the idea to the jury that they paid you this for anything you did for them—in consideration of any service, or do you mean to say that you received the money & they charged you with it?

A. It was all for that, which I will show you. I will show it to you.

Mr. BROADHEAD. All for what?

WITNESS. He wants to know; he can make his question & I will answer it.

127 Q. I understand you to say these items of money advanced to you were charged to you upon the books.

A. They are.

Q. Now how did you pay them, if you paid them at all, or does the balance stand against you upon the books yet?

A. No, sir; it does not.

Q. How was it paid?

A. A part of it consists in matters like this: Here I hold in my hand an account I rendered against them. I happened to come across it accidentally among some papers; I will ask the privilege of reading it.

"OCTOBER 12TH, 1868.

"To travelling expenses & board, Washington & New York, during the summer of 1868, on current business & contracts....1,378 dollars."

Q. Now I ask you about business prior to December, 1866, in order to ascertain how you made that amount of money that you owned in December, 1866.

A. Will you allow me to say, if they had felt disposed to let my credit run there for four years, I have a right to balance whenever I settle with them, and they have a right to call me and demand it. I pro-

128 pose to answer the question as you put it to me. You want to know what constitutes these credits. I propose to take my own way to answer it.

Mr. BROADHEAD. What is the question you asked him?

Mr. HENDERSON. I ask him what was credited upon the books against these charges, to make Hayes ahead in 1866, as much money as he states?

WITNESS. Allow me to say—I show here that I had it in my hands—I haven't paid it back; I showed you when I got it; I gave you the dates, just when I had got it; now you want to know how he balanced the accounts.

The COURT. What is your question, let the witness understand it.

Mr. HENDERSON. Your honors will see that Mr. Hayes states he was worth in the fall of 1866, so much money, I ask him now, how did you make that money? he goes on and reads over the ledger there, without any explanation, because there is no journal. He reads that Perry Fuller & Co. paid him so much money during a certain time—now he has already read from these books, showing he owed the concern

129 1,300 dollars. There must be some way of crediting down these accounts on the other side. If Perry Fuller paid him in consideration of services, it is strange that it is charged to Hayes' account on the books.

The COURT. Do you make inquiry what his books show, or what the fact is?

Mr. H. The fact.

The C'T. And you limit your inquiry down to 1866?

Mr. H. Certainly. I haven't asked him about his wealth from December, 1866.

The COURT, (to the witness.) Now, if you understand the question you will answer that, and if your counsel want you to go beyond that they will ask you.

Mr. VOORHEES. I object to the question, and will state my objection to the court. The material question and inquiry right before the court, the relations presented here, is as to Hayes' property in 1869. He made representations upon the purchase of this bill of goods. As I understand, it is alleged that there was fraud in that; that he didn't possess any such property; that it was not his. That is the material inquiry, that it was a fraud, and consequently his name was simply used,
130 & that somebody else stood behind him. That inquiry touches the transaction in 1869. I submit that it is not material what *it* was worth in 1866, except so far as it affects his credibility, and when a witness is examined upon a question that is not material to the issue, and only submitted for the purpose of testing his credibility, unless I am entirely mistaken in the rules of law, the party asking the question is bound by the answer. I think I cannot be mistaken. I repeat: the material question to be inquired into is whether a fraud was attempted in 1869 in purchasing these goods—whether an untrue statement was made out to this New York man, on which he got his credit, which, as the court has remarked, appertains more or less to an inquiry into an alleged fraud. Now, if the opposite counsel see fit to range about and go back three years, and inquire what the witness was worth then, the point that I make is, that he is bound by his answer upon a material point.

Justice DILLON. The court understands the question to be, in substance, this: What services did he render prior to 1866, if any, or what credits it would entitle in respect to these charges. You limit,
131 in your question, the inquiry to 1866, as I understand. Now, the objection to answering, made by Mr. Voorhees is this, that the inquiry in suit here relates to an alleged fraud, a fraudulent transaction, or colorable purchase by the plaintiff, in his own name, for Fuller, and therefore any statements that he has made as to property that he was worth, as to his assetts and property in 1866, is *one* material, because this inquiry relates to a transaction that occurred in 1869, and to what he was worth in that year, not in 1866; and the proposition is urged that if the witness, in answering the question, gives an immaterial answer, that the party who propounds the question is bound by it, and cannot contradict him. That is a good proposition of law, and if the inquiry was an immaterial one, it is true that the party proposing it couldn't put on the stand any witness and contradict him. But while that is a sound principle of law, it seems to all of us it does not apply to this case—that the rule should not exclude further inquiry of the same witness; and we are inclined to think also, for the purpose I have before indicated, that you can inquire into this man's means, and any
132 answer he gives as to how he acquired the means is immaterial in the meaning of the rule. The result is that you may ask this question, and you may limit it to 1866, and he may answer it as asked; and his own counsel, when they come to re-examine, if they wish to ascertain how he came by means subsequently, they will be at liberty to pursue it. With this explanation, you may propound your question again, and let the witness understand it.

Q. State what credits reduced that account so as to make you worth

in December, 1866, when you left Kansas & went to New York—what was credited to you, so as to make you worth that amount of money? If you paid back the money to Perry Fuller & Co. with which you were charged, then you didn't have any money left. They must have credited you with something else; now, what was it?

WITNESS. You make an assertion. You say if I paid back the money I hadn't anything left. Then, I had as much as when I paid it back.

Q. Did you pay it back?

133 A. I haven't answered the question yet. You want to know of me what credits I received in 1866. Is that your question?

Q. Yes, sir.

WITNESS. I will give it to you. On September 13, '65, I was credited with 34 35. I was credited on the 12th October with 500 dollars. That is loaned money. On the 4th of October, 1866, I was credited with 500 dollars more. That's all the credit that I received in 1866.

Q. Is there a balance brought up in December, 1866, on the books?

A. It is posted here.

Q. How does that account stand in 1866 with the firm of Perry Fuller & Co.

A. My account stands credited here on the 1st day of March, 1867, with eleven thousand four hundred & twenty-six dollars and ninety-nine cents, a balance——

Q. I ask you in 1866. What was the state of your account in December, 1866, when you left to go to New York.

A. Exactly as I said to you—what the items credited to me in 1866.

Q. How do you make a credit to you of eleven thousand dollars?

A. This was in March, 1867. I received credit between these times.

134 The COURT. In February, 1867, there was 7,400 dollars paid to you?

A. Yes, sir. In 1867 I was credited up with that amount of money—on the 7th day of January, 1867.

Mr. HENDERSON. Q. You are credited here. What's that, "By Sipple?"

A. That is a credit of 2,500 dollars.

Q. What is that for?

A. For services.

Q. What services?

A. Services performed for Perry Fuller & Co.

Q. What were they?

A. Those that they recognized as an indebtedness to me?

135 Q. State the character of the services.

A. It was for keeping their cotton accounts for them; I worked for them night after night, and travelled through and over a region of the country that it was worth a man's life to travel over for their interest.

Q. Where did you travel?

A. Over the Indian country.

Q. Through what part of it?

A. All over it.

Q. I thought you were per*mov*ing duty as clerk for Mr. Sells?

A. I did.

Q. How did he spare you during that time?

A. Mr. Sells was in Washington, and I was down among the Indians.

Q. Then there was nobody in the superintendency at all?

A Yes, sir; I carried the superintendency in my hat. Mr. Sells

managed the whole thing under the direction of Senator Harlan, and remained there most of the time the first year, at Washington, and most of the first year, commencing in 1865, and running away through into 1866.

Q. You carried, then, the superintendency in your hat whilst performing duties for Perry Fuller & Co., for which they allowed
136 you 25,000 dollars; is that what you say to the jury?

A. No, sir.

Q. What did you say then?

A. I say any transactions that was necessary to be done, I was in the line of duty to do it. It wasn't a thing devolving upon me. I was called on to do a great many things to carry these things through.

Q. What?

A. Those matters there. Mr. McDonald is here, and knows I went through the Indian country assisting them in distributing their supplies, a thing that didn't devolve upon me.

Q. Who was Perry Fuller & Co.?

A. Contractor' for the Government.

Q. With whom did they make the contract?

A. The Indian Department.

Q. Through whom?

A. The Secretary of the Interior & the Commissioner of Indian Affairs.

Q. Are Indian contracts made with the Secretary of the Interior?

A. The contract was made under the auspices and direction of the Secretary of the Interior.

Q. Didn't Sells make contracts?

A. He simply submitted them to the Secretary of the Interior,
137 and he approved them.

Q. What did you have to do with that?

A. With what?

Q. With the contracts you said you got twenty-five thousand dollars.

A. I haven't said that.

Q. What did you say?

A. I said I performed services for them.

Q. What?

A. I kept the accounts for them; they furnished the supplies. I saw that the articles furnished by the Indian agents were correct, as transmitted to them.

Q. Don't you know that that credit is false and fraudulent?

A. I know, sir, that the statement that is made to you is right, and I don't want to hear any such words as that.

Mr. VOORHEES. I object to that mode of questioning; there is another way of arriving at that fact, if it is so. I object to it.

The COURT. Do you insist upon the question?

Mr. HENDERSON. No, sir; I withdraw it; I am anxious to get along with this case.

Q. Haven't you stated in your deposition here, on file in this case, that you obtained this money through commissions upon Indian
138 contracts, instead of expenses for travelling?

A. No, sir.

Q. You went from Kansas to New York, and was in the employ of Fuller & Co. there, were you not?

A. I was.

Q. How long?

A. I was first credited up.

Q. I just simply asked you how long you were in their employ after you went to New York?

A. I can give you about the time I was in their employ. In 1867 & in 1868, up to some time along about the first October.

Q. Were you in their employ again in 1869 in settling this Stettor matter?

A. I was in their employ voluntarily, by an agreement with Mr. McDonald, and for which I have received no pay.

Q. Mr. Fuller was appointed by Mr. Johnson in the fall of 1868, I think, revenue collector at New Orleans, was he not?

A. I think he was.

Q. Did you go with him to New Orleans?

A. No, sir.

Q. Did you follow him there?

A. I went to New Orleans.

Q. Were you in his employ there?

139 A. I was one of the appraisers there for about December & January.

Q. You were one of the appraisers under Fuller?

A. Yes, sir.

Q. What was your salary?

A. Eighteen hundred dollars a year.

Q. What time did you leave there?

A. I think it was about the 1st of February. It was at the time when the question arose as to making the appropriation of eighty thousand & some odd dollars that was due to them for the supplying of Indian supplies for the Navajoe Indians in New Mexico; there was a deficiency that was due them for goods; that was in 1869.

Q. When did Fuller leave New Orleans?

A. I don't remember.

Q. When you left New Orleans, did you leave before or with Fuller?

A. O, no, sir; I left before he did.

Q. How long first?

A. I think it was somewhere along about the first of February.

Q. Of what year?

A. 1869; I went to Washington under his instructions.

Q. What to do?

140 A. To look after this appropriation of eighty thousand for the Navajoe Indians.

Q. What did you have to do with that?

A. I looked after it to see that it was got through.

Q. Did you do so?

A. I staid there until the appropriation was passed.

Q. What did Fuller have to do with it?

A. The money, when paid upon the contract, Mr. Fuller was to have received the benefit of. He was to receive the benefit of the credit.

Q. What had he done—made advances to the Navajoes, or how was it—was it to his benefit that it was to be passed?

A. It was for the benefit of a contract for which he furnished supplies, he and Stettor, and was one of the subject-matters which entered in the settlement between him and Stettor.

Q. What time did Fuller go up to New York, after he returned from New Orleans?

A. I don't know; I don't know anything about the time he returned from New Orleans. I don't remember now. I saw nothing of him until I was telegraphed immediately to go to New York.

Q. Do you know whether Fuller got into any difficulty with
141 regard to the Government down there?

A. I don't know anything about it. I wasn't cognizant of anything there. All I know is public rumor. He never took the trouble to say anything about it to me, and I don't know from him or any one else any further than merely public rumor.

Q. You didn't know he was putting his property out of his hands at that time?

A. I did not.

Q. About what time was it that he made you that power of attorney under which he turned over notes to you; didn't you say he gave you power of attorney to collect and close up his business everywhere?

A. Yes, sir; and when he did it his credit was good for a hundred thousand dollars.

Q. When was that?

A. That was in the spring of 1868.

Q. He was perfectly good then?

A. Yes, sir.

Q. It was the spring of 1869 that he returned?

A. Yes, sir.

142 Q. There was a note of one Gaylord. Do you know what became of that; did you have anything to do with that note?

A. Yes, sir; I had, in one sense.

Q. What was that?

A. I took it out of the hands of the First National Bank at Lawrence, and placed it with Riggs and Riggs, at Lawrence, for collection.

Q. Whose note was that; due to whom?

A. Perry Fuller & Co.

Q. When was that?

A. I think it was April, 1868.

Q. What time was that note collected?

A. I don't know. All I know about it is hearsay since then.

(Paper handed to witness.)

Q. Is that your signature?

A. That is my signature.

Q. (Reading:) "I mean by commissions in Indian contracts, commissions paid me by Perry Fuller & Co." For what; how did you earn these commissions?

(Counsel for the plaintiff, Mr. Nelson, instructs the witness that he needn't answer the question, on the ground stated in the objection.)

Q. Did Perry Fuller pay you these commissions on any contract
143 or understanding between you & them; and if so, what?

A. I had a verbal understanding.

Q. What was that?

(C's'l for plff renews his instructions on the same grounds stated in the last answer.)

(C's'l for def't objects to what pl'ff's c's'l said.)

WITNESS. At the time I had this understanding, I was in Lawrence, Kansas, in the employ of Elijah Sells.

Q. You were in his employ as a clerk?

A. Yes, sir.

Q. He was superintendent of Indian affairs.

A. He was.

Q. Were Perry Fuller & Co. contractors for the Department?

A. They were contractors for the Department, through Elijah Sells.

Q. Tell us, if you please, the amount of commissions you was to receive?

A. I could tell pretty near—about twenty-five thousand dollars as commissions.

Q. Were you, during this time, receiving wages of Sells, as superintendent?

A. Yes, sir; I was during the time these were earned.

Q. How did you earn it?

Mr. BROADHEAD. I understand that is substantially what the witness has gone over.

144 Q. What service did you perform for Perry Fuller & Co., for which they paid you commissions?

(Same instructions by pl'ff's c's'l.)

Q. On what did you receive commissions?

(Same instructions.)

Mr. BROADHEAD. Do you want this deposition in evidence?

Mr. HENDERSON. Yes, sir. I offer a part of it.

Mr. BROADHEAD. While the witness is on the stand?

Mr. H. Certainly.

Mr. BROADHEAD. I supposed you wanted to ask the witness some question.

Mr. HENDERSON. You have forgotton. I asked the witness that, and I wanted to economize time. He stated he never received a dollar's commission from Perry Fuller; he stated he received it travelling in a dangerous country for them. In his deposition he says he received it.

The C'T. Do you offer that in evidence?

Mr. HENDERSON. Yes, sir.

The C'T. The witness' deposition has been heretofore taken, and is on file in the court. Being, however, present, the law will not permit him the deposition to be read as original evidence, because the

145 witness is here to be examined in open court, before the court and jury. The deposition can be referred to only for the purpose of contradicting him, and the course laid down in the books, and settled, is this: he is to be interrogated, shown the deposition, and asked whether he did not, after it is read to him, *whether he did not* testify so & so on a former occasion; and if he answers yes, then it gives him an opportunity to explain, if he chooses; otherwise he would be denied the right to make any explanation. So it is entirely proper for you to read that, and ask whether he didn't testify so & so on a former occasion. The supposition is that it is not introduced to the jury, except through the witness.

Q. Did you state that in your deposition?

A. I seem to have stated it in my deposition, and I beg now to make an explanation in reference to it. In the first place my instructions from my counsel at the time w*as* that I should decline to answer any question bearing upon that subject; that it was not pertinent to this case, but so far as possible, and within the rule of equity, I com-

146 plied with it, and I may say I did say some things to them by which I attempted to satisfy them with reference to the question they put. So far as I myself was concerned, I was perfectly willing to answer it, but my counsel declined my answering it, and I was under his instructions, and I didn't understand that that was a question which entered into it. Now, if this court says I am to answer that question, I will do so, and, in doing so, I will explain what I meant exactly when I said I did regard them as commissions.

Q. Go on and explain.

A. When I entered into that service there was a specific understanding between Perry Fuller and myself, that, inasmuch as they had been involved in difficulty in the contracts that they had had with the Government for furnishing supplies, and in obtaining their money—with the knowledge I had of all these matters—that if I would see that simple justice was done to them, and the accounts kept so that they would comply with the rules and regulations of the Department, and under the instructions of the Commissioner of Indian Affairs, so
147 that, instead of their getting at sea, in their ignorance, I should keep them straight. I didn't make a demand of him for a dollar, but when he got through, on the 7th day of January, 1867, he voluntarily, of his own accord, said to me, "Mr. Hayes, you have served us in this matter, & helped us, and we have got our pay from the Government; we feel indebted to you. I want to say to you, we will put twenty-five thousand dollars to your credit." I said to him, "I am much obliged." That was all the answer I made. It is commissions, because it comes from something; but there was no contract between us that bound them one way or the other; it was a mere matter of choice—he could do it or let it alone. I didn't know whether it would be ten dollars or ten thousand dollars; it was all voluntary with him, but inasmuch as he acknowledged that service, & that it was due, and, in consideration of the fact that he had received a liberal per centage on his trade, and had been benefited by it, and it had accumulated handsomely with him on contracts he had, I felt that it was no hardship for me to accept it.

148 Q. Then you didn't know you was worth 45,000 dollars in 1866?

A. O, I wasn't put in a position to state that fact. I say I am justified in saying, at that time that I was worth it, but if you asked me at that time, have you got so much money, & can put your fingers on it, I didn't have it.

Q. Do you say it was such a per cent. on these contracts, or do you mean it was for travelling expenses?

A. I have explained it; it was purely for services and travelling expenses they felt they owed to me. You may count it as commissions, or what you may. It was for services I performed that wasn't in the line of duty, as an agent or clerk of the superintendent of Indian affairs, but a latitude which was allowed to me.

Q. You mean to say they were contractors for Mr. Sells?

A. They were.

Q. And they paid you a commission on the contract?

A. They did not.

The COURT. He stated it was not a commission, and you get into a dispute whenever you name it.

149 Mr. HENDERSON. The witness didn't state that Fuller & Co. were contractors for Sells.

Mr. VOORHEES. He does state so in the deposition which he now says he did state.

WITNESS. I say it was made through him. Mr. Sells was the man through whose hands it was made. Every iota of his transactions were submitted to the Secretary of the Interior, and endorsed by him. No contract was recorded as made until sanctioned by the Department.

Q. Do you know contracts by Indian superintendents are submitted to the Commissioner of Indian Affairs; do you know they are not valid contracts until submitted; don't you know to the contrary?

A. They must be ratified by the Secretary of the Interior to make them valid; the law is specific on that point. That is my understanding

Q. Did you assist Perry Fuller in getting these contracts?
A. No, sir.
Q. What service did you render?
A. I have stated to you. I kept his cotton account during the time he had these contracts.
Q. You told me you didn't keep his books during that time?
150 A. No, sir.
Q. What did you keep?
A. When the receipts were obtained by him I gave him specific instructions as to—first, how each one of them should be received, and under what instructions, and he required every one of the agents to comply with it. They were as ignorant of the facts connected with this as the parties who had them in hand. I had an eye over the entire management of the matter, and they were all done in conformity with the contract, and in conformity with the law.
Q. You bought these goods for Ottawa?
A. I did.
Q. Were you ever in Ottawa?
A. I was.
Q. When?
A. In 1865 & 1866 I was there, but my knowledge of Ottawa is a knowledge of all the surrounding country.
Q. How long were you in Ottawa?
A. No length of time.
Q. How long; a day?
A. I don't know as I could tell you as to time. I passed
151 through there, and *had* when I had business that called me down through that part of the country. I can't put my finger on the time and say I staid there so long.
Q. Did'nt you state in the deposition that you never were there but once, and only passed through then?
A. I don't remember distinctly about it now. I may have gone that road, and may have gone some other road.
Q. Will you state now that you ever were in Ottawa before you purchased these goods?
A. If I stated it once, I would as leave leave it there. My memory may have been better then than it is to-day.
Q. You say you never was there but once?
A. I don't remember distinctly.
Q. Did Perry Fuller ever do business there?
A. I never knew he did.
Q. When these goods were attached, and you came to St. Louis to see about it, did you find Fuller here—Perry Fuller?
A. I don't remember whether I did or not.
Q. Did you see him here when you came?
A. I did; I saw him while I was here.
Q. Who came first, you or he?
A. I don't remember. I only know from his own say-so—what
152 he had said to me when I was in New York—that he was going to Little Rock. I knew he was going to Washington, and going from there to Little Rock. I saw him in St. Louis. Whether he went there before or after I did, I don't know.
Q. How long after the seizure did you get here?
A. As soon as I could reach here. I was sick at the time the seizure was made.

Q. Did Fuller telegraph about the seizure. Did you telegraph for him to come here?

A. I think I did.

Q. To what point?

A. I telegraphed him on two occasions. Once I telegraphed upon receiving a telegraph despatch from Buckley, which was, in substance, this: Mr. Buckley telegraphs me that my goods have been attached for a debt of Perry Fuller, Alexander McDonald, & F. A. DeWolf. Meet me in New York to-morrow morning without fail. I telegraphed that to him, and he met me there, and I demanded of him if anything stood in the way it should be released—to release my goods. The goods were not released.

Q. Did Mrs. Fuller come—was she along?

A. I don't know anything about that.

153 Q. Wasn't she here?

A. Yes, sir; I saw her here.

Q. Where was she when you left New York?

A. I don't know.

Q. Was she there or in Washington. What was your evidence about it?

A. It is not a matter I kept track of.

Q. Did you know Edward Fuller?

A. Yes, sir.

Q. Was he here. Did you see him a day or two after the seizure?

A. I saw him here, in St. Louis.

Ques. Where did Edward Fuller live at the time?

A. In Ottawa.

Q. How did he come here?

A. I know nothing at all of it, sir. I only know I saw him at the Southern Hotel.

Q. Did Fuller aid and assist you in getting security to release the goods?

A. He tried to.

Q. Did you pay his expenses to come here?

A. I don't know; but in one sense I did. I gave him credit for it. What he paid out I gave him credit for; what he did not, I think, perhaps, I furnished him some means. I don't remember distinctly

154 about it.

Q. What did Fuller owe you for?

A. It is on evidence here. I stated it once.

Q. You had agreed to give up to Edward Fuller the last obligation that you had against the concern, had'nt you. Was'nt that your agreement?

A. That ain't the way business men do business. It may be very well for a lawyer to do business that way.

Q. Do you know John F. Coyle?

A. I should say, my acquaintance was so limited—I might say I did know him, and then say I did not.

Q. You met him in New York during the time you were purchasing these goods?

A. No, sir.

Q. Did'nt you see him there?

A. I saw him in New York. I think it was some time along in the latter part of July, or the first of August. I went to Fuller's room, and found him sitting there. While I was negotiating with Mr. Nelson for a settlement of affairs between Perry Fuller & S. S. Stettor & Co., I opened

the door & walked in, & found Coyle sitting there, and I imme-
155 diately turned and walked out. Fuller called me back. I stopped there, & Coyle, from the remarks made to me, indicated that he had been talking with Fuller something about the store matter. He turned to me and said: "Mr. Hayes, I hope you won't desert Mr. Fuller, but stick to him until he get a settlement with them. You can do better than any other man." That is the sum & substance of all the conversation that passed between Fuller and Coyle in my presence.

Q. Didn't you ask Coyle not to press Fuller for money at that time?

A. No, sir; I want to be explicit in regard to that, for the statement made there—and I have read that deposition—is as false as can be, and I stand here to refute it.

Ques. You didn't state to Mr. Coyle that Mr. Fuller would realize largely on these goods and pay him every cent he owed him?

A. I have stated to you exactly what passed between Coyle & myself, and outside of that I say not a word, except once—I saw him once afterwards.

Q. Do you know Mr. Fant?

A. Yes, sir; I know him.

Q. Did Mr. Fuller state to Fant in your presence, or did you
156 state to Mr. Fant that Mr. Fuller had procured you to levy an attachment upon the Stettor matter to cover it up and keep it away from his creditors?

A. No, sir.

Q. Did he state that he was afraid the Government would seize the property, and for the purpose of protecting it against his creditors & the Government he got you to put that attachment on it?

A. No, sir.

Q. You know Mr. Fant?

A. I know Mr. Fant.

Q. You know Mr. Whaling?

A. I know Mr. Whaling.

Q. Known him a good while?

A. I knew him at one time.

Q. He signed a bond for you in order to release some property of Perry Fuller?

A. He signed a bond for me.

Q. Didn't you ask him to sign it?

A. I asked him to sign a bond for Perry Fuller.

Q. He signed the bond?

A. He did.

Q. How long had you known him "in 1855?"

A. I knew him first in 1855; I knew him in 1855 & 1856.

157 Q. Did you state to Mr. Whaling during the month of August, at your rooms, or upon the streets of New York, that you had gone into business for Perry Fuller, and you and Perry Fuller were buying a large amount of goods here, & you were going to take them out West, in Kansas?

A. I did not.

Q. Are you acquainted with Clifton Halen?

A. I was introduced to him in New Orleans.

Q. Did you see him in New York during the time you were purchasing the goods?

A. I don't know, but I may have seen him once; I think I saw him.

Q. Did you have any conversation with him?

A. Conversation about what?

About the purchase of these goods?

A. No, sir.

Q. Did you say to Mr. Halen—who was dunning Mr. Fuller for some money—that if you were in his place you wouldn't press Fuller for that money now; Fuller is buying goods, & hard pressed, but will pay you more than you demand when he is able to do so?

A. No, sir.

Mr. BROADHEAD. When & where?

158 Mr. H. In the Central Park gardens in New York City.

Q. Are you acquainted with Waddy Thompson?

A. No, sir; I just barely know him.

Q. Did you see him while you was buying goods in New York?

A. No, sir; didn't see him at all; didn't know the man then; I only knew him from his being pointed out to me in St. Louis.

(Paper handed to the witness.)

Q. Is that your affidavit?

A. That is my signature; I don't know what is before it.

Q. Well, take the paper and examine it. I will ask you if you know whose writing it is in?

A. No, sir, I do not; I do not recognize the handwriting.

Re-direct examination by Mr. Broadhead, counsel for the plaintiff:

Q. How came that book of Perry Fuller's to be brought to St. Louis?

A. It was brought in obedience to a summons served on me; I requested Mr. Nelson to let me take it.

Q. A summons served on you in your behalf?

159 A. In behalf of the First National Bank of Washington, the defendants in this suit.

Q. A notice to produce the book?

A. Yes, sir.

Q. Is that the notice?

(Paper handed to the witness.)

A. Yes, sir.

Q. When was that served on you?

A. I do not know whether I can give the exact date that it was served on me; there is no return on it here; this is a copy that was left with me; it was in November sometime, 1870; I don't remember just what time; I got it and brought it here.

Mr. BROADHEAD. The certificate for the $5,000, signed by Perry Fuller & Co., in 1865, I believe, is that the only one you hold now?

A. The others that I had I surrendered to Alexander McDonald on the settlement with him; about the first day of May they were surrendered to him.

Q. Did those certificates bear interest?

A. Yes, sir; ten per cent. on the face of them.

Q. About what was the amount of Perry Fuller's contract

160 with the Indian Department; what amount of money did they cover in the course of a year?

A. Well, it varied; in some quarters it was larger than others.

Q. Did it go into the hundreds of thousands of dollars?

A. I remember one quarter it exceeded five hundred and four thousand and something.

Q. You agreed, I understand, with Edward Fuller, that if he would make a good title to the Kansas City property you would deliver up the certificate.

A. I did, if it was delivered to me as it was.

Q. You took it, then, as collateral; you held that bond for a title to the Kansas City property, as collateral for this debt.

A. Yes, sir; that was what it was held for, and what Mr. McDonald understood it to be.

Q. What business are you engaged in now?

A. Merchandizing.

Q. Have you paid these debts in New York?

A. I have not.

Q. Paid none of them?

A. But a very small portion of them.

Q. Except the amount you paid to Buckly & Co.?

161 A. That is all, sir.

Q. Have you been hindered in any way by this suit, from paying those claims?

A. It has destroyed my credit, and taken the means out of my hands that would enable me to handle or trade the goods.

Q. Those parties all hold notes against you now?

A. Yes, sir; they hold paper against me.

Q. Have you made any effort to collect the balance that you hold against Perry Fuller & Co. now, from Perry Fuller's estate?

A. Well, I look to Mr. McDonald and Mr. Fuller, or the estate of Mr. Fuller, to make me good.

Q. What has become of the steamboat stock you had? Has anything ever been realized on that?

A. The steamboat stock I placed in the hands of Buckley, Sheldon & Co., and they acquainted me with the fact, that it was turning out as we supposed, and at the earliest opportunity I went to Memphis to see what the shape of it was, and see whether it could be made available, as I supposed it could be at the time, in order that that amount,

162 the amount that is represented, might be placed to my credit on the disposition of the stock. And we found that it was in such a shape that nothing could be realized from it; in fact, that it had not been transferred in a proper shape to enable me to handle it.

Q. So that your creditors in New York have not realized anything of those assets?

A. No, sir; have not realized from it.

Mr. BROADHEAD. I will state that we intend to introduce Mr. Hayes in rebuttal to some testimony in these depositions here; therefore, I wont detain him any longer now.

Re-cross examination by Mr. Henderson:

Q. In regard to that notice I see you are notified to produce the books of account of Perry Fuller & Co., kept by them in the year 1868; also the stump-check books of Perry Fuller & Co., since the time aforesaid; also the bank-books and check-books showing the accounts during the past six years with importers and traders in New York City; did you call the le'ger the account-books of the party?

A. I procured everything that I could find, and everything

163 that I could hear of. I knew of no other books that existed.

Q. Was there any other le'ger, beside that?

A. No, sir.

Q. You do not know anything about a journal?

A. No, sir; I don't know anything about a journal or cash-book, that is the only book I know of in existence, nor I don't know anything about who has them; until I saw them now, it is the first time I saw them

since I made the final balance sheet; one for McDonald and one for Mr. Fuller.

Q. Don't you know the journal is in Canada with De Wolf?

A. I do not know how it can be.

Q. Well, is not that the case?

A. It is the presumption on my part that it is not so. I know nothing of it.

Q. Do you know whether it was taken up there by De Wolf to Canada?

A. I don't know, sir; it is the first intimation I ever heard of it. I never heard of such a thing before.

Q. Well, De Wolf is in Canada, isn't he?

A. I don't know, sir.

Q. You know he left this country?

A. I know he told me he was going.

164 Q. Did you make any effort to get the journal; did you go to Washington to get it?

A. No, sir.

Q. Did you write to Mr. Nelson to bring it?

A. No, sir; Mr. Nelson lives in Ottawa.

Q. Where did you get that book?

A. Mr. Nelson furnished it.

Q. Where did he find it?

A. I don't know.

Q. You made no effort then to find the journal?

A. I did, as much effort as the means I had around me. I asked Edward Fuller if he could furnish me with the books, and he said he knew nothing of them. I asked Mr. Nelson, and he said he had one book and that was all; I asked him if he knew where the others were, and he said he did not; that is all the knowledge I have of the whole matter.

Q. You say you have not paid any of those merchants in New York?

A. None, only what I have stated.

Q. What has become of the $50,000 in money you had, besides the goods; why have not you paid that?

165 A. You have got me ciphered up there; you can go through it as well as I can. I have got tired of it.

(Plaintiff's counsel objects to the question.)

The COURT. That is not very material.

Mr. HENDERSON. Q. About the stock, to whom did you apply, at Memphis, in regard to it in order to ascertain its value?

A. The superintendent, to whom Mr. McDonald gave me a letter.

Q. Who was it?

(Objected to.)

Mr. HENDERSON. Well, you may stand aside.

By Mr. BROADHEAD. Q. Is not this notice directed to yourself, as well as to Mr. Nelson?

A. It is.

Q. Is Perry Fuller dead or alive?

A. Dead.

Q. You are not his executor?

A. I am not.

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167 Plaintiffs then read in evidence the deposition of John P. Rice.

Deposition of John P. Rice.

Deposition of John P. Rice, taken before Hanson C. Gibson, a notary public in and for the county of New York and State of New York, on the 10th day of February, A. D. 1870, at the city of New York, State and county aforesaid.

JOHN P. RICE, a witness on behalf of the plaintiff in the above-entitled action, being examined by E. A. Doolittle, counsel for plaintiff, M. W. Devine appearing for defendants, says:

I reside at 311 W. 51 st., New York City; general dry goods or fancy goods, rather. My firm is Curran, Goodwin, Walker & Co. Commenced business Jan'y 1st, 1866, in this city. Know W'm Hays, plaintiff in this action. We sold him goods in August 27th, 1869. Sold him on four months time.

Ques. Did he represent where he was going into business?

(Objected to as not competent & immeterial, by counsel for defendants.)

Ans. Ottawa, Kansas. Shipped goods to him at Ottawa, Kansas. Have a copy of the bills here, have examined them and know them to be correct. The whole amount of said bills is $4,290 12. The goods consists of dry goods. This is an exact copy of the bill as rendered to him at the time. (Bills put in evidence and marked Exhibit No. 1.)

Ques. To whom were those goods sold—the credit given?

(Objected to by def't' counsel, as calling for the conclusion of the witness.)

Ans. To William Hayes.

Ques. Did you have any knowledge of his having any one
168 connected with him in business?

(Obj. by def't' counsel as immaterial.)

Ans. I had not.

Ques. What statements did he make to you at the time he purchased the goods.

(Obj't. to by def't counsel.)

Ans. He stated he wanted to buy a bill of goods on four months' time for Ottawa, Kansas; that he had or was about to start a business there, & he thought it was a good point for business. He expected to be able to sell the different tribes of Indians there; they came in fall to lay in their winter supplies, & he wanted to get his goods out there in time to sell them. He thought he would be able to sell a large amount, large & small quantities.

(Answer objected to as immaterial & incompetent by defendant's counsel.)

Ques. Did your firm take any steps to find out his ability to pay; & if so, state what?

(Objected to by def'ts' counsel on same grounds as before.)

Ans. We asked him how much means he had in his business, and said (objections by def't' counsel as to what he said) his means amounted to about forty thousand dollars. My impression is that his means consisted of notes, bonds, & mortgages, that he had got out of another business that he had been in. He had turned most of these collaterals for the purchase of his staples, and staples goods, and cash goods, or goods bought on short time, and consequently he would like to
169 buy our goods, which were fancy goods, or time goods, on four months' time. One of our men went to a party who he said he

had bought a portion of his goods from, [and the report was satisfactory to us. On investigation, we found his statements to be correct.]

(Taken, subject*ed* to objection. Objected to by def'ts' counsel on same grounds, all in brackets as marked above.)

Ques. Did you have any knowledge of any of your goods being seized by the First Nat. Bank of Washington, or by the sheriff of New York, or the sheriff or marshal*l* at St. Louis?

(Objected to by def'ts' counsel.)

Ans. These goods were shipped on Saturday morning, from our store. Saturday evening, about nine o'clock, there was a gentleman came to my house, 311 W. 51 st., and said (objection to what he said) the agent had sent him up—agent of the line had sent him up to notify us that goods we had shipped to William Hayes had been attached by the sheriff of New York, on the account of, I think he said, *of* some bank up in this State, and another claim, a bank at Washington. He said he did not know*n* whether these goods had left the dock. They had attached all the goods whether they were on the dock or on the railroad.

Ques. Did you investigate the matter so as to ascertain against whom the attachment issued?

(Objection as immaterial by def't counsel.)

Ans. We did, and found it was issued against Perry Fuller

(Answer also objected to on same grounds, *on same grounds.*)

Ques. What effect, if any, did the attachment have against
170 Hays' credit, as far as it effected your house and others?

(Objected to by def'ts' counsel as incompetent & immaterial and calling for a conclusion.)

Ans. It spoiled it as far as our house was concerned. Have been a merchant twenty-five years.

Ques. How would it effect his credit generally, in New York?

(Same objection by def't' counsel.)

Ans. Merchants would not want to sell goods on time when there is an attachment or a suit against a man, unless the man is a very wealthy man.

Cross-examination of John C. Rice, by Mr. Devine:

Q. You have stated that you sold these goods to Hayes on the 27th of August, 1869?

A. That was the date they were billed. He made arrangements to take them, and they were sold a day or two before that.

Q. Who introduced him to you?

A. A man by the name of Skerrett, a salesman of ours.

Q. How had Skerrit become acquainted with him?

A. I don't know, unless it was through his partners. He used to live in the West.

Q. Did Hayes have any person assisting him in purchasing these goods?

A. I think not.

Q. Did any person accompany him at any time to your store on any of these occasions?

A. Yes, sir.

Q. Who?

A. Perry Fuller.

171 Q. Did you have any conversation with Perry Fuller?

A. Yes, sir.

Q. How many times did you see Fuller?

A. I do not know; I didn't have any conversation with him but twice.

Q. How many times was he at your store?

A. I saw him there twice.

Q. When was the first occasion? How long before or after the 27th of August?

A. It must have been a day or two before. I could not say how many times.

Q. And when was the second occasion?

A. I can't say what day it was; whether it was the day the bill was made out, or the next day.

Q. On which of these occasions was it that you had the conversation with Perry Fuller?

A. I had a conversation with him on both occasions.

Q. Was Mr. Hays present?

A. No, sir.

Q. Was he in the store at the time?

A. I think he was.

Q. Will you please state all that was said during the first conversation that you had with him?

(Objected to on the grounds that any conversation with Perry Fuller is immaterial.)

A. The first conversation I had with him, I asked in regard to Hayes' responsibility.

Q. What did he say to you?

172 A. He said he considered him worth 40 or 50 thousand dollars.

Q. Anything else?

A. I asked him if he would object to endorsing Hays' notes, and he said he would not.

Q. Did you make any more inquiries of him than what you have stated?

A. No, sir.

Q. Did he say anything to you as to what reason he had for believing him to be worth, or good for forty thousand dollars?

A. No, sir; he did not.

Q. Did you have any conversation with him as to what Hayes' property consisted of?

A. I did not.

Q. Did you make any inquiries of him as to what business Hayes had been in?

A. I did not.

Q. How did you know or learn that Fuller knew anything about Hayes?

A. One of our firm learned that Hayes was buying goods at Buckley, Sheldon & Co.'s, and learned that he had been a clerk for Perry Fuller.

Q. Learned that Hays had been a clerk for Perry Fuller?

A. Yes, sir; and he knew that Perry Fuller had bought largely at that house.

Q. Knew that Perry Fuller had bought largely?

A. Yes, sir; that is formerly; so we sent one of our men over there to enquire.

Q. What is the name of your man that you sent over there

173 to make inquiries?

A. His name is Prindle; he is our cashier.

Q. Will you please state what took place between you and Perry Fuller at the second conversation that you had with him?

A. There was nothing said, only he came in the second time and endorsed the notes.

Q. He endorsed Hayes' notes?
A. Yes, sir.
Q. Did you, then, give Hays the credit on these purchases which he applied for?
A. Yes, sir.
Q. Credit of four months?
A. Yes, sir.
Q. Did you get any security on that credit?
A. We simply took his notes, endorsed by Perry Fuller.
Q. Have you those notes?
A. We have them at the store.
Mr. DEVINE. I would like to call upon you to furnish us copies of them to annex to your deposition.
(Mr. Doolittle consents that they be attached, subject to his objection.)
Q. Prior to the introduction of Hayes to your house by Mr. Skerritt, your salesman, had you known him at all?
A. No, sir.
Q. Had you known Perry Fuller, prior to that time?
A. Only by reputation.
Q. Had you known of Fuller prior to that time as a merchant
174 in this city?
A. As a merchant doing business here?
Q. Yes, sir.
A. I never knew that Fuller did business in New York.
Q. Were those goods insured before they were sent off?
A. I think not; because they were shipped most of the way by rail, & we hardly ever get any goods insured where they go mostly by rail. In some cases it is requested; but I think it was not in this case.
Q. Did you learn of what Hays' means consisted?
A. No more than what he told me.
Q. What did he tell you, on that subject?
A. He said that it consisted of notes, bonds, or something like that, that had some time to run, and that he turned them out to buy goods with.
Q. Did he say to whom he had turned them out?
A. He let Buckley, Sheldon & Co. take some of them.
Q. Any other person?
A. I don't recollect now what other ones he did mention; there was no other place that we inquired of but there.
Q. Was there any arrangement made as to Buckley, Sheldon & Co. to apply any surplus securities in their hands to the payment of your bill?
A. There was not.
Q. Nor any understanding?
A. No, sir.
Q. At that time did you have any conversation with Hayes or Fuller as to Fuller' son being in business at Ottawa, Kansas?
175 A. I heard Mr. Hayes say that he had a son that was connected with another man, doing some kind of a private banking business—something like that—one of the firm. I think the notes were made payable at that bank; altho' I won't be sure. I mean the notes that we received for these goods; that was the way the question came up.
Q. Did you have any other conversation with Hays or Fuller in reference to Fuller's son, or the business of Fuller's son in Ot'awa?
A. We did not.
Q. Did you have any conversation with Hayes or with Fuller in rela

tion to any business conducted or carried on at Ottawa by or in the name of Mr. Fuller's wife?

(Objection as to any conversation with Fuller.)

A. We did not.

Q. Was anything said as to Hayes being interested in any business in Ot'awa, Kansas, in which Mr. Fuller's wife was interested?

A. There was not. There wasn't anything said in regard to his having any other business except this mercantile business that he had an interest in.

Q. Did you have any conversation with Fuller in reference to any claims or any proceedings which the Government had or were about to take against him?

(Objected to.)

A. I did not.

Q. Did you have any conversation with Hays on that subject?

176 A. I had not.

Q. Was that subject alluded to in the course of your dealings with Hayes?

A. It was not.

Q. You hold the notes which you took from Hayes?

A. We do.

Q. Have they been paid?

A. They have not.

Q. Have you received any security for them?

A. Have not.

Q. Have you made any application for security from Hayes?

(Objected to.)

A. I have not.

Q. Have you been promised any security or indemnity of payment, either by Hayes or Fuller aside from the notes?

A. I have not.

Q. Who gave directions for the shipment of those goods?

A. Mr. Hays.

Q. Did you hear him give the directions?

A. He gave them to me when I checked his bill, or before checking it.

Q. Did Hayes state to you how he intended to carry on this business at Ottawa; did he say anything to you as to who were to be his assistants or his clerks in the business?

A. He didn't mention any names; he said he had some first-rate clerks; mentioned that.

Q. But mentioned no names?

A. Stated that he had men who understood the business and

177 said he would succeed.

Q. Did he speak of having been himself personally at Ottawa?

A. I don't know as he did in particular.

Q. Did he speak of having come from Ottawa to New York to buy goods?

A. Yes, sir.

Q. From what he said to you, you understood that he had come right to New York from Ottawa to lay in a stock of goods; will you please state about what was said?

(Objected to.)

A. I don't think there was anything said where he did come from. I took it for granted that he came from there; altho' he didn't state direct where he did come from.

Q. You have stated that you understood he had been a clerk for

Perry Fuller—that you were informed that he had been a clerk for Perry Fuller; at what place or places had he been a clerk for Perry Fuller?

A. I don't know where it was.

Q. Did you learn, or were you informed, as to where he had been a clerk for Perry Fuller?

A. I did not.

Q. Previous to this introduction by your salesman, Skerrett, you had had no personal acquaintance either with Fuller or with Hayes, had you?

A. No, sir.

Q. You are not in the habit of selling goods to men with whom you have no previous acquaintance; are you?

A. Yes, sir; sell twenty a day, in busy seasons.

178 Q. You do?

A. Yes, sir.

Q. And do you sell to them where you have no previous acquaintance with them and know nothing about their means or antecedents?

A. We sell them on statements, and I have gone outside and proved their statements to be true.

Q. Before delivering the goods?

A. Yes, sir.

Q. Now, in this instance, you first took statements from Hayes & from Fuller?

A. I don't intend to be understood as saying——

Q. (Interrupting.) Did you not state that you made inquiries from Mr. Fuller as to Mr. Hayes' means?

A. I did.

Q. And did you not also state that Fuller represented to you that Hayes was worth, or that he believed him to be worth, from forty to fifty thousand dollars?

A. I did.

Q. Did you, after that, send out to make inquiries as to Hayes' means?

A. No; I sent out before I had a talk with Fuller, because I did not know whether Fuller was good or not until I made inquiries.

Q. Did you make inquiries also as to Fuller's means?

A. We done pretty much on what Buckley, Sheldon & Co. would do. We were willing to sell to anybody they would sell to.

179 Q. Did you learn from them that they had sold to Hayes with no security except the note of Hayes, with Fuller's endorsement?

A. I could not state that positively, because he paid for part of his bill, and I don't know how he closed up the balance of it.

Q. State your best recollection on the subject.

A. That is my best recollection; at the time we made the enquiry, they had not closed up their matters and they could not tell; I don't know as it was asked how they were going to be paid.

Q. What report did you receive from Buckley, Sheldon & Co. in respect to Mr. Fuller?

(Objected to as immaterial, irrelevant, & incompetent.)

A. We understood from them that they had sold him a large amount of goods previously, and that he had always paid them.

Q. Did you understand anything definite as to the amount of his means—of his ability?

A. Perry Fuller's?

Q. Yes, sir.

A. We did not.

Q. In what capacity was Perry Fuller acting, so far as you saw, in calling at your store with Hays, in reference to these purchases made by Hayes?

A. I requested Mr. Hayes to bring in Mr. Fuller, as I wanted to see him and talk with him.

Q. How did you come to request Hayes to bring him in?

A. From the information that I got from Buckley, Sheldon & Co., and the reputation of Fuller's buying a great many goods
180 there, and I knew that he knew how Mr. Hays stood out at Kansas, and the prospect he had in the future.

Q. You don't mean at Buckley, Sheldon & Co's?

A. No, sir.

Q. What did you say to Mr. Hayes when you requested him to bring Fuller to see you?

A. That is all I said to him.

Q. Will you please repeat it?

A. I asked him if he would not request Mr. Fuller to come in—that I would like to see him.

Q. What did he say to you then?

A. He said he would speak to him and have him come in there.

Q. Did he afterwards come in with Fuller?

A. I think Mr. Fuller came in alone; I was in the office; they might have been in the store together, I could not say whether they were or were not.

Q. Will you please to state what Fuller then said to you in respect to Hayes?

A. I asked him what Mr. Hayes was worth and he said forty or fifty thousand dollars; he said he was a good business man, that he had been a clerk for him somewhere in the western country; he didn't state where—what point it was; he said he had been a very fortunate man, and had got his means together and saved, & had speculated a little, and had got about forty or fifty thousand dollars, and intended to go to Kansas, (Ottawa,) and there intended to start a business, and he
181 thought that what means he had, and his knowledge, that he would succeed, and that he would not be afraid to trust him for any reasonable amount.

Q. Did you take down in writing a memoranda of the statements that were made to you by Hays or by Fuller or either of them?

A. I don't think I did; anything except what Fuller stated.

Q. You made a memorandum of that?

A. I made a memorandum of the amount that he stated, and when he stated it.

Q. Would you have the kindness to furnish us with a copy of that and annex it to your deposition?

A. Yes, sir.

(To be annexed subject to objection as to relevancy and competency.)

Q. What induced you to request Hayes to send Fuller to you?

A. I wanted to find out how he stood and to ask him if he was willing to endorse his paper.

Q. In what way did you first hear of Fuller in connection with Hayes?

A. One of our firm stated he had been buying a good many goods at Buckley, Sheldon & Co.'s, and that he was in town, and if we could get Fuller on the notes it would be good any way beyond any doubt; he said he presumed that Hayes was good enough, but it was much better to have two names than one.

Q. Had Fuller's name been mentioned to Mr. Prindle, your cashier, at Buckley, Sheldon & Co.'s?

182 A. I don't know; I presume so.

(Objected to as to any presumption.)

Q. Had your cashier, in making his report to you, stated anything as to any mention of Fuller's name having been named to him, at Buckley, Sheldon & Co.'s?

A. I think he came back and stated that Buckley, Sheldon & Co. would trust either party.

Q. Would trust either Hayes or Fuller?

A. Yes, sir.

Re-direct:

Q. You have spoken of Fuller's buying goods?

A. I had reference to previous purchases; not anything within a year.

Q. Fuller had formerly been engaged in the business himself?

A. I understood so.

Q. Had you concluded to sell him before you saw Fuller?

A. Yes, sir.

Q. Give him the credit before you had your conversation with Fuller?

A. We told him that we thought we would sell him & he might call in again and we would tell him for certain.

Q. Had some of the goods been laid out before you saw Fuller?

A. I could not say whether there was or not; it was a time when we were very busy; they were checked into the bills for different parties—we often lay out goods before a credit has been given, but not al-

183 lowed to go into the packing-room until they are checked by the financial man.

Q. Were the goods selected by Hays before you saw Fuller, or any portion of them?

A. I think he had laid out a few dress goods.

Q. The suggestion of getting Fuller as endorser was yours?

A. It was one of our firm; I didn't suggest it at all.

Q. And then you propose' that Hayes should bring in Fuller?

A. Yes, sir; I told Hayes that I considered him good enough for what he wanted; but I said one of our firm had heard this outside, and we would like to have Fuller endorse the notes; one of our firm who was very intimate with one of this firm and had heard of his buying a great many goods there from time to time, and it was on that account that he requested me to have Hayes bring him in, and see if I could not get him to endorse the note or account of the bill. We considered $4,000 a pretty good bill; but if it had not have been more than $1,000 we should not have requested it.

(Objection as to any conversation between the witness and his partner and Hayes & Fuller.)

Q. What did Hayes say when you proposed to him to get Fuller as endorser?

A. Said he would speak to him.

Q. Did he say anything as to whether he could get him or not?

A. He said he thought he would be willing to; he would speak to him and see.

184 Q. You didn't understand that Fuller had been buying any goods within the last year?

A. No, sir; I didn't understand that he was in business at all.

JOHN P. RICE.

And attached to the foregoing deposition of John P. Rice are the following exhibits, each marked "Exhibit No. 1,' and are in the words and figures following, to wit:

(Copy.)

$1,457 00.] NEW YORK, *August*, 27, 1869.

Four months after date I promise to pay to the order of Perry Fuller, esq'r, fourteen hundred fifty-seven dollars, at Peter P. Elder, banker, Ottawa, Kansas. Value received.

(Signed) WILLIAM HAYES.

No. . Due Dec. 27—30.

(Endorsed:) PERRY FULLER.

(Copy.)

$1,457 00.] NEW YORK, *August* 27, 1869.

Three months after date I promise to pay to the order of Perry Fuller, fourteen hundred & fifty-seven dollars, at banking-house of Peter E. Elder, Ottawa, K'n's. Value received.

(Signed) WILLIAM HAYES.

No. . Due, Nov. 27—30.

(Endorsed:) PERRY FULLER.

(Copy.)

$1,457 00.] NEW YORK, *August* 27, 1860.

Five months after date I promise to pay to the order of Perry Fuller, esq'r, fourteen hundred & fifty-seven dollars, at Peter P. Elder, banker, Ottawa, Kansas. Value received.

(Signed) WILLIAM HAYES.

No. . Due Jan'y 27—30, '70.

185 (Endorsed:) PERRY FULLER.

JOHN P. RICE. L. H. TYLER. W. G. BARNEY.

NEW YORK, 18, .

William Hayes, Ottawa, Kans., Aug. 26, '69.

Perry Fuller states this day to J. P. Rice that W'm Hayes was worth 40 to 50^{m} dollars in his own name, & that he, Fuller, would endorse his paper for any goods he would buy of us.

And the said copy of bill referred to in the foregoing deposition & marked Exhibit No. 1, is in the words and figures following, to wit:

NEW YORK, *Aug.* 27, 1869.

John P. Rice.
H. M. Curran.
M. A. Goodwin.
Pinckney Walker.
L. H. Tyler.
W'm G. Barney.

Terms, 4 mo's.

Discount allowed on time-bills for prepayments:
6 per cent., 10 days.
5 " " 30 "
3 " " 60 "
1½ " " 90 "
For current funds no variation from these terms.

M. William Hayes, Ottawa, Kansas, bought of Curran, Goodwin, Walker & Co., importers and jobbers of silks and fancy dry goods, No. 359 Broadway, and 71 Franklin street.

Please address P. O. box 2865. Particular attention paid to orders.
All overdue and unsettled bills will be drawn for at 3 days' sight.
Interest will be charged on cash bills not paid within 30 days.

268	1 gros-grain	6	2 60	15 60
51	2 poplin	34	1 90	64 60
587	1 chene mohair	11	37⁹	4 13
	4-12 gent's merino shirts		32 50	10 83
	Room 258, St. N. Hotel.			
	JOHN P. RICE.			$95 15
186 31	1 p'c. velveteen	16⁹	2 50	41 25
269⁵¹ 109	7 marceline	105	1 00	1 05
110	1 "	15	1 25	18 75
248	1 groder Rhine	43	1 10	47 88
282	1 "	41	1 80	74 25
265	1 gros-grain	60	1 75	105
262	1 "	51¹	2 10	107 63
268	1 "	42	2 60	109 20
281	1 groder Rhine	50	1 50	75
56, 43, 38	3 satin	26⁹	2 25	59 63
94	1 "	24	2 50	60
33	1 "	12	2 75	33
53	6 poplin	301⅞	1 05	316 97
51, 55, 47, 50	12 "	529	1 90	1,005 10
A	4 merino	214	70	149 80
B	1 "	43⅜	75	32 53
97	1 "	49½	87	43 42
338	1 chene mohair	12⁹	30	3 75
10	1 "	13	40	5 20
259	2 "	99	42⁹	42 08
633, 526	2 "	27	25	6 75
617, 630	2 "	27⁹	25	6 87
721	7 "	392⁹	25	98 13
249	1 " poplin	50	32⁹	16 25
728	5 "	266¹	35	93 19
510, 612	2 stripe "	70¹	25	17 56
725	1 "	159¹	32⁹	51 75
517	1 "	13	30	3 90
187 656	1 plaid	13	27⁹	3 58
701	2 imp. plaid	1 01	35	35 35
702	3 "	1 51½	35	53 14
206	2 poplin alpaca	98	60	58 80
40	3 Viel barege	61½	40	24 50
50	3 "	61¹	50	30 63
	JOHN P. RICE.			2,935 79
	Forw'd			2,935 79
116	2 Nott'gh'm lace	84	25	21
570	2 "	69	40	27 60
1485	2 "	73	42⁹	31 03
597	2 "	72⁹	45	32 62
601	2 "	68	75	51
10400	1 Hamburg edge	12	15	1 80
10402	1 "	12	18	2 16
3988	1 "	13⁹	22⁹	3 04
1897, 668	2 "	32	27⁹	8 80
11301	1 "	16	22⁹	4 40
361	1 "	16	30	4 80
19630, 6616	2 "	19¹	35	6 74
313, 241	2 "	20	37⁹	7 50
958, 9086	2 "	20	40	8
20, 796	2 "	15⅞	42⁹	6 75
2159	1 "	18	50	9
4537, 218	2 "	29½	55	16 09
1192, 1213	2 "	25⅔	75	19 13
1536	1 " insert'g	16	15	2 40
5574	1 "	15	20	3
188 1696	1 "	20	22⁹	4 50
1598, 644	2 "	27	25	6 75
2248⁴⁹ 18, 1427	3 "	35	27⁹	9 63
48221	1 "	11⁹	30	3 45
11323, 6161	2 "	23	35	8 05
1230	1 "	8	37⁹	3
12977	1 "	11⅛	40	4 55
3401, 1225	2 "	21	50	10 50
1416	1 "	9	55	4 95
1438	1 guipure edge	26⅘	20	5 33
1977	1 "	24¹	25	6 06
1263	1 "	27⅛	37⁹	10 36
3587	1 "	23⅛	65	15 35
7558	1 "	23	70	16 10
426	1 "	18²	75	13 87
1133	1 "	19	1 00	19
78	1 "	13⁹	1 10	15 13
737	1 "	12	1 87⁹	22 50

(Written in red ink across the face :) Positively no goods to be returned unless damaged.
(Written in black ink across the face :) Duplicate.
(Written in black ink across the face :) Duplicate.

591	1		13¹	²37⁸	29 09
429	1 limit'n		29	15	3 54
306	1		24	25	6
229	1		24	37¹	9
453	1		24	45	10 80
		JOHN P. RICE.			3,440 97
	Forw'd				3,440 97
31219	1 real guip. edge		24	40	9 60
584	1 limit'n		3	110	3 30
408	1 valene "		15½	55	8 66
189 6833	1		15½	62	9 61
2620	1		8⁹	120	10 20
101	1 insert'g		12¹	37⁹	4 95
1569	1		12²	40	5
1021	1		11³	50	5 88
13746	1		14¹	55	7 84
1314, 1164	2 limit'n valene "		6	55	3 30
1165	1		3	60	1 80
8607	1		3	2 00	6
8619	1		3	2 25	6 75
124	1		3	2 50	7 50
1270	2 " " edge		6	37²	2 25
86	2		6	40	2 40
1311	1		3	50	1 50
1138	1		3	75	2 25
1152, 769	2		6	1 00	6
1282	1		3	1 25	3 75
207	1		3	1 50	4 50
2864	1		2	1 75	3 50
1297	1		3	2 50	7 50
263	1 crochet "		4	20	80
103, 183	2		8	25	2
2066	1		3	27	83
2339, 1212, 127	3		10	30	3
2964	1		3	35	1 05
2374	1		3	40	1 20
9436	1		3	45	1 35
2584	1		2	50	1
190 568	1 Saxony "		6	12⁸	75
155	1		6	15	90
2448, 158	2		12	20	2 40
2455, 160	2		8	25	2
1386	1		3	30	90
150	1		2	50	1
2027	1		2	50	1
1276	1 honey-comb		6	10	68
181	1		6	15	90
182	1		5	20	1
103	1 limit'n cluny "		2	25	50
104	1		2	35	70
		JOHN P. RICE.			3,588 55
1651	1 limit. cluny edge		2	75	1 50
2417	1		2	1 00	2
660	3 cotton trim'g "			25	75
	6			25	1 50
	14 tape "			37⁹	5 25
	5 linen "			87⁹	4 38
	6 pique			1 00	6
224-'4	1 galon ruche				40
1138-'3⁹	1				35
'4	1				40
'5	1				50
'6	1				60
'8	1				70
3211-'3⁹	1				25
'4	1				30
191 '5	1				35
'6	1				40
'10	1				80
1458-'4	1				40
'6	1				50
'8	1				60
227-'6	2			75	1 50
'8	1				85
262-'5	1				50
'6	1				62
'7	1				75
80-'6	1				50
226-'6	1				63
'8	1				85
1308, 1285	2 Metternich frill'g			90	1 80
1286	1				1
6104, 1302	2			1 00	2

1298	1				1 15
121	1				1 25
6096	1				1 50
1	3 Cashs	"		62½	1 88
2	3			75	2 25
3	3			87½	2 62
4	3			1 00	3
7	3			1 25	3 75
10	3			1 51	4 50
2	1 lace edge				90
192 3	1				1 00
	Carr'd fo'w'd				3,651 29
	JOHN P. RICE.				
	Bro't fo'w'd				3,651 29
4	1 lace edge				1 25
7	1				1 50
2	6 Magic ruffle			35	2 10
4	6			45	2 70
5	3			50	1 50
6	6			55	3 30
7	4			60	2 40
2	6 lace	"		45	2 70
4	6			55	3 30
5	3			60	1 80
6	6			65	3 90
7	2			70	1 40
1	1 Valenciennes	"			55
2	1				65
3	1				75
4	1				85
	4 Empress	"		1 25	5
	4 Coquette fluting			1 50	6
	5 lace veils			50	2 50
6695	12			50	6
6697	12			65	7 80
6699	6			85	5 10
6700	6			1 00	6
6701	6			1 25	7 50
2	1 stamped patterns				2
193 3					2 25
4	1				2 50
28	9 p'r im't'n pongee			2 25	20 25
158	3 d'z cot. p't'd h'dk'f			2 50	7 50
254, 2430, 2633	3 C Turkey red			3 00	9
2884	1				3 50
00	2 gent's nem'd			1 50	3
182	2 " p't'd			1 75	3 50
	JOHN P. RICE.				3,781 34
	Forw'd				3,781 34
3, 690	3 doz. lady's cotton h'dk'fs			1 25	3 75
4904	1 Em't lawn	"			1 75
7	1				3
3952	6			1 75	10 50
654	6			2 25	13 50
8221	6 lace border			50	3
8984, 8213	6			75	4 50
8927	6			87½	5 25
10	6			1 50	9
8869	6			1 62½	9 75
8255	6			1 75	10 50
2850	6			2 00	12
8421	6			2 25	13 50
8930	5			3 00	15
627	1 linen cuff				3 75
615	2 " collar			2 00	4
12	4-12 lace	"		2 75	92
13	3-12			3 00	75
194 3, 51	½			3 75	1 87
285	½			4 50	2 25
134	½			5 00	1 25
125	½			6 50	1 63
1152	2-12			8 00	1 33
1817	2-12			9 00	1 50
10949	2 thread lace coll's			62½	1 25
10947	5			75	3 75
10953	5			87½	4 38
10946	4			1 00	4
10952	2			1 00	2
10942	6			1 25	7 50
10943	1				1 37
10955	2			1 50	3
10939	2			1 50	3
60	1				1 63

10931, 10930	3			2 00	6
744, 814	3			2 00	6
1313	2 d'z broche scarfs			4 50	9 00
154	2			6 00	12
151	2			8 00	16
156	2			10 50	21 00
1412	3 " " shawls			10 50	31 50
1074	3			13 50	40 50
1770	2			15 00	30
		JOHN P. RICE.			4, 119 47
	For'd				4, 119 47
1609	1 broche shawl				20
195 1001	1 Paisley "				15
	1				15
12330	1				20
	3 cases & straps				5 50
					$4, 194 97

JOHN P. RICE.

(White line.)

Also the deposition of George W. Bassett.

Deposition of Geo. W. Bassett.

Deposition of George W. Bassett, taken before Hanson C. Gibson, a notary public in and for the county of New York, and State of New York, on the 10th day of February, A. D. 1870, at the city of New York, State and county aforesaid.

GEORGE W. BASSETT examined by Mr. Doolittle:

Q. Your residence and place of business.
A. Bridgeport, Massachusetts.
Q. Your business.
A. Earthenware & china & glass ware, &c.
Q. What is the name of your firm?
A. G. W. Bassett & Co.
Q. Have you a place of business in New York City?
A. Yes, sir; 49 Barclay street, & 52 & 54 Park place.
Q. Do you know W'm Hayes?
A. Yes, sir.
Q. The plaintiff here?
A. Yes, sir.
Q. How long have you known him?
A. Since I sold him that bill of goods.
196 Q. Did your firm sell him a bill of goods?
A. Yes, sir.
Q. Have you got an invoice of it here?
A. No, sir.
Q. Can you have one made out?
A. Yes, sir.
Q. Can you state exactly the amount of the invoice?
A. I cannot—about $800. I will attach an exact copy of the invoice.
(Mr. Devine consents that it be attached to the deposition.)
Q. To whom were these goods sold?
(Objected to as calling for a conclusion.)
A. W'm Hayes.
Q. Just state what occur'ed when he purchased these goods,

A. Sold him on four months.
Q. Where were they to go?
A. Ot'awa, Kansas.
Q. Were they shipped for that place?
A. Yes, sir.
Q. In whose name?
A. W'm Hayes.
Q. Did you take any steps to learn as to his ability to meet his engagements?
A. I did.
Q. What steps on that subject?
(Objected to.)
A. He referred me to Buckley, Sheldon & Co.
Q. You made inquires there?
197 A. Yes, sir.
Q. Did he make any statements as to his means?
A. Said he was worth forty or fifty thousand dollars—about fifty thousand dollars he thought.
Q. You satisfied yourself of his responsibility?
A. We were, from what I learned from him & Buckley, Sheldon & Co.
Q. The result of these enquiries satisfied you?
A. Yes, sir.
Q. Did he represent as anybody being engaged with him in business?
A. No way or shape.
Q. Did you hear of these goods being attached?
A. Yes, sir—notified.
Q. Notified they were attached?
A. Yes, sir.
Q. By whom?
A. Notified that they were attached. I don't know as they told us, & I don't know as we asked.
Q. State what you learned as to their being attached, and against whom the attachment was.
A. I think I heard; I made no especial inquiry; I was satisfied that I should get my pay for the goods & I didn't care where they were or who had them. They were out of my hands.
Q. What effect, if any, would the attachment of his goods before they left the city, or on their way, have upon his credit here in New York?
198 A. He could not buy any goods from me without paying cash.
Q. After the attachment?
A. Yes, sir.
Q. What effect would it have upon the mercantile community in general?
A. From looking at it in my view it would ruin it. No one would duplicate bills without they should have security for the money.
Q. The result of such an attachment would be to destroy his credit here?
A. Most certainly I should think it would.

Cross-examine' by Mr. Devine:

Q. I understood you to say, Mr. Basset', that you' first knowledge of Mr. Hayes was at the time when you sold him this blll of about $800.
A. Yes, sir.

Q. And on what day was that?

A. I could not say positively; it was about the last of August or the first of September, 1869.

Q. Who introduced him to you?

A. A man by the name of Bennett, a salesman in the boot & shoe house of Broadway. I can't give you the name—I can't think of it now; I think it is nearly op'osite Stewart's store; I know Hayes bought boots and shoes there. I can't give the name now, as I don't remember.

Q. He bought from you on a credit of four months?

A. Yes, sir.

199 Q. Did he give his note?

A. Open account.

Q. Is it still an open account?

A. Open account now.

Q. You have stated that you were satisfied that you would get your pay any how?

A. Yes, sir.

Q. Will you please state what satisfied you would get your pay?

A. By his means; he had means enough to pay all his liabilities.

Q. This claim of yours against him has matured, has it not?

A. Yes, sir.

Q. Has it been paid?

A. No, sir.

Q. Have you had any correspondence or conversation with him in reference to it?

A. None whatever.

Q. When Bennett introduced him to you did Bennett bring any references to you as to his means?

A. I thought that as his house was selling him, I could. I can't give you the name now, but I can, if it is necessary, get it.

Q. You then made inquiries of Hayes as to his means?

A. Yes, sir.

Q. What did he state to you on that subject?

A. I understood he said he was worth about $50,000.

Q. Did he say of what his property consisted?

200 A. He had some bonds, and, I understood him, some real estate.

Q. What did he say the bonds consisted of—what kind of bonds?

A. I could not say.

Q. Didn't you inquire?

A. I did, but I have forgotten; but I should judge it was Government bonds—that is, as far as I can recollect.

Q. Did he say where they were?

A. I think that he had placed in Buckley, Sheldon & Co.'s hands a portion, but what portion of this property I could not say. They said they had sold him a large amount of goods, and had given him a credit on his own account of certain portion', which they sold us; and from what they said and what he said I sold him the goods.

Q. Where did he say this real estate was situated?

A. Somewhere, I think, in New York State.

Q. Did he say anything to you as to where his place of residence was at that time when he applied to you?

A. I think he said wife was living somewhere in New York State, either in the western or northern part of the State, but I can't say further. It was somewhere in New York State.

Q. Did you have any interview with Perry Fuller in connection with this business?

A. None whatever. Don't know him.

Q. Did he say anything to you about owning land out west?

A. Not that I recollect.

201 Q. What did he say to you as to the place to which he intended to send these goods that he bought from you?

A. He thought it was a good opportunity to realize a large profit on the goods in selling them to the Indians.

Q. Did he give you any reference to any house here except Buckley, Sheldon & Co's?

A. No, sir.

Q. Did you make any memorandum of his statement to you?

A. Not that I recollect of.

Q. Are you certain about that?

A. No, sir.

Q. I will ask you if you will have the kindness to look, and if you find any memorandum of any statement that he made to you, to annex a copy of it to your deposition.

A. I will do so.

Q. Of what did the goods consist which he bought of you?

A. Earthenware & crockery; & I don't know but what there was some china & some glass articles. There was a variety, I should judge.

Re-direct:

Q. You knew no other person in the transaction but Hayes?

A. No, sir.

GEO. W. BASSETT.

And attached to the aforesaid deposition is an exhibit, marked Exhibit No. 2, which is in the words and figures following, to wit:

202 G. W. BASSETT. O. A. GAGER.

Mr. W'm Hayes, Ottawa, Kansas, bought of G. W. Bassett & Co., importers and jobbers of china, glass, and earthen ware, 49 Barclay street, 52 and 54 Park place. 4 mo. W. G. Erie.

O. A. G.					
1663	60 doz. plates, 12, 1 40; 30, 1 25; 10, 1 15; 6, 1 00; 2, 70			73 20	
	24 " " deep, 2, 1 40; 6, 1 25; 6, 75; 10, 75			22 30	
	7 " dishes, ½, 3 00; 1, 4 00; 1, 5 00; 2, 7 00; 1½, 9 00; 1, 12 00			50	
	7 " bakers, 1, 2 25; 2, 3 00; 1½, 4 00; 1½, 5 50; 1, 7 00			29 50	
	2½ " nappies, ½, 3 50; ½, 5 00; 1, 7 00; ½, 8 50			15 50	
					190 50
1667	2 " cov'd dishes, 1, 12 00; ½, 13 50; ½, 15 01			26	
	6 sauce tureens, comp		1 25	7 50	
	8 boats, 25; 24 pickles, 25			8	
	8 cov. butters		83½	6 67	
	13½ doz. jugs, 26, 9 50; 4-12, 6 50; 2-24, 4 00; 2½-30, 3 25; 3-36, 2 75			69 37	
	30 sets im. teas		50	15	
					132 54
1913	24 ewers & basins		1 35	32 40	
	18 cov. cha's		90	16 20	
	8 soaps, 75; 4 trays, 75			9	
	1 doz. soap slabs			2	
	3 " mugs, 1, 2 25; 2, 2 00			6 25	
	12 T. pots, sugars, & creams		1 44	17 28	
	6 sugars & creams			5	
	6 doz. bowls, 2, 2 00; 2½, 1 80; 1¼ 1 60			10 90	
	18 sets h'd teas		75	13 50	
	40 " im. "		50	22 50	
203	12 " " coffees		75	9	
	12 " h'd "		1	12	
					156 03
2694	15 doz. plates, 2, 1 40; 8, 1 25; 3, 1 15; 2, 1 00			18 25	
	4 " " 3 deep		75	3	
	1½ " dishes, ½, 4 00; ½, 5 00; ½, 9 00; 1-6, 12 00			9 50	
	1⅓ " bakers, ½, 3 00; ½, 4 00; ½, 5 50; ½, 7 00			8 08	
	⅓ " nappies, 1-6, 3 50; 1-6, 5 00; 1-6, 7 00; 1-6, 8 50			4	

	8 cov. dishes, 4, 1 00; 4, 1 12½	.....	8 50		
	2 " butters	83⅓	1 67		
	4 boats, 25; 6 pickles, 25	.....	2 50		
	2 T. pots, sugars, & creams	1 44	2 88		
	1-6 doz. sugars	7	1 16		
	2½ " bowls, 1, 2 00; 1½, 1 80	.....	4 25		
	2 1-12 " jugs, ½, 9 50; ½, 6 50; ½, 4 00; ½, 3 25; ½, 2 75	.....	10 17		
	2 pr. ewers & basins	1 35	2 70		
	2 cov. cham	90	1 80		
	G. W. BASSETT. (over)	.....	78 46		479 07
	12 doz. plates, 4, 90; 6, 80; 2, 70	C. C.	9 80		
	2 " dishes, ½, 1 75; ½, 2 25; ½, 3 00; ½, 4 00	"	5 50		
	2 " bakers, ½, 1 50; ½, 1 75; ½, 2 00; ½, 2 50	"	3 87		
	1½ " nappies, ½, 1 75; ½, 2 00; ½, 2 50	"	3 12		
	6 " bowls, 2, 1 10; 2½, 90; 1½, 75	"	5 57		
	1½ " jugs, ½, 5 25; ½, 2 75; ½, 1 75	"	4 88		
	1 " mugs	"	1 25		
	1½ " chambers, ½, 4 75; ½, 3 75	"	6 37		
	½ " " cov'd, 8	"	4		
	½ " ewers & basins, 10	"	5		
	18½ sets teas, 25	"	4 50		
					138 32
204					617 39
	Dis. 10 0/0	.....	.....		61 73
					555 66
	12 doz. C. C. plates	80	.....		9 60
	50 sets " teas	25	.....		12 50
	½ doz. " dishes, 1 75; 2 25; 4 00	.....	.....		4
	½ " " bakers, 1 50; 1 75; 2 00; 2 50	.....	.....		3 88
	½ " " ewers & basins, 10	.....	.....		5
	2 China tea sets	9 50	.....		19
	2 " " " band	13 50	.....		27
	1 5-12 doz. tea-trays, ½, 5 50; ½, 6 80; ½, 12 00; 1-6, 16 50	.....	.....		11 75
	1 plated castor	.....	.....		12
	5-12 doz. feather dusters, 1-6, 30 00; ½, 8 00	.....	.....		7
	½ " castors & bottles	9	.....		4 50
	½ " " " "	10 50	.....		5 25
131	18 " ½ p't tumblers	45	.....		8 10
42	14 " ½ " "	60	.....		8 40
25	10 " ½ " " star	90	.....		9
	6 " 27 "	1 30	.....		7 80
	6 " 232 "	1 40	.....		8 40
	6 " 45 "	1 50	.....		9
941	6 " goblets	"	.....		9
7714	6 " "	"	.....		9
169	6 " "	1 35	.....		8 10
060	6 " "	1 05	.....		7 50
97	7⅔ " "	1 35	.....		10 35
3166	1 " sets	.....	.....		8 75
3	1 " "	.....	.....		10
205	½ " "	12	.....		3
	½ " dishes, 1 50; 2 50; 3 50	.....	.....		3 75
	1 " salts, 50; 80; 1 25	.....	.....		2 55
	Forw'd	.....	.....		$799 84
	G. W. BASSETT.				
	Am't bro't for'd	.....	.....		799 84
	2 doz. salts	50	.....		1
	½ " peppers	1 50	.....		75
	½ " mol. jugs, 4 00, 5 00	.....	.....		4 50
	½ " lamps	5 75	.....		2 88
	½ " "	6 25	.....		3 12
	½ " "	5	.....		2 50
	½ " "	4	.....		2
	1 " " hand	3 75	.....		3 75
	½ " " "	5 75	.....		2 88
	½ " " "	6 50	.....		3 25
	½ " " "	8	.....		4
	½ " "	9	.....		4 50
	½ " "	7 50	.....		3 75
	½ " "	6 50	.....		3 25
	½ " "	6	.....		3
	½ " "	7	.....		3 50
	½ " "	7	.....		3 50
	½ " "	7	.....		3 50
27244	12 " A sun chim	50	.....		6
7560	8¾ " cott. " for lamps	.....	.....		0 00
	4 " burners	1 25	.....		5
	2 boxes, 70; 10 bbls., 3 50; 3 hhds & casks, 3 00; 4 crates, 5 33; carting, 4 50	.....	.....		$17 03
	G. W. BASSETT.				883 50

206 Also the deposition of George W. Bradford.

Deposition of Geo. P. Bradford.

Deposition of George P. Bradford, taken before Hanson C. Gibson, a notary public in and for the county of New York, and State of New York, on the 10th day of February, A. D. 1870, at the city of New York, State and county aforesaid.

GEORGE P. BRADFORD, examined by Mr. Doolittle:

Q. Where is your residence and place of business?

A. Place of business 349 Broadway, or was at the time I sold this bill, corner of Leonard street; and my residence is 43d street.

Q. Your firm-name?

A. Geo. P. Bradford & Co.

Q. What is the character of your business?

A. Wholesale clothing trade.

Q. You know W'm Hayes, the plaintiff here?

A. I do.

Q. Did your firm sell him a bill of goods?

A. We did. The goods were entered to his debtor on the books the 25th day of August, 1869.

Q. Selected a few days before they were sold, I suppose?

A. Yes, sir; they were picked out by Mr. Hayes some two or three days before.

Q. To whom was this bill of goods sold?

A. To Mr. Hayes.

Q. Credit given to him?

A. Yes, sir.

207 Q. Did you know any one else in the transaction but him?

A. No one whatever.

Q. Did you satisfy yourself as to his ability?

A. I did.

Q. Where was these goods to go?

A. They were to be shipped to Ottawa, Kansas.

Q. In whose name?

A. W'm Hayes.

Q. Did you hear of these goods being attached afterwards?

A. I did; that is, I heard that Hayes' goods were attached.

Q. Did you hear who the attachment was against?

A. I understood they were attached as belonging to Perry Fuller.

Q. What effect, if any, did that have upon Mr. Hayes' credit, his goods being taken?

A. With me, it destroyed his credit.

Q. How long have you been a merchant?

A. I have been in business in New York 25 years last January.

Q. What effect would it have upon the mercantile community in general here?

A. I should judge from my own feelings and experience, it would destroy it utterly.

Q. What representations did Hayes make as to his ability?

A. When Hayes applied to me to buy this bill of goods, he said he had made a statement of his condition to Buckley, Sheldon & Co., and referred me to them for the items, stating that they would show a correct statement of his conditon.

208 Q. Did you ask him whether any one was connected with him in business or not?

A. I did not, because he said he was going in business alone; he was going to buy the goods in his own name; the credit was given to him alone.

Cross-examined by Mr. Devine:

Q. Who*m* did you first become acquainted with Hayes?

A. A few days previous to the date of this bill.

Q. A few days previous to the 25th day of August, 1869?

A. Yes, sir.

Q. Who introduced him to you?

A. Perry Fuller, General Steadman, and Mr. Hayes all came into my store together a few days prior to the sale of this bill and sat in the office. I had known Mr. Fuller for a long time, and had sold him a great many goods, and I had some acquaintance with General Steadman, and we sat there and had a long conversation. During that conversation Mr. Fuller stated that Mr. Hayes, an acquaintance of his, was going to buy a stock of goods to take out west to sell to the Indians, for some kind of trade that he used to be in when I sold him goods. I sold Perry Fuller goods a great many times, and, said he, very likely you can sell him a bill of goods, if you try.

Q. Was that all that was said?

A. That was all that passed at that time, except introduced Mr. Hayes to one of my young men, a salesman, and told him to attend to Mr. Hayes, and if he wanted any merchandise to sell him a bill of goods if he could.

Q. Did you make any inquiries of Fuller as to Hayes' means
209 or responsibility?

A. No, sir, not at that time; there was no conversation about it. Mr. Fuller introduced him to me as being a man of responsibility, saying that he was going to open a store there, and you will do well to sell him a bill of goods, and think you can if you try.

Q. Was Hayes present at the conversation?

A. Yes, sir; about there, talking to my partners and a young man, but I don't know whether he was where he could hear this conversation; he was in the store.

Q. He was introduced to you by Fuller?

A. Yes, sir; introduced to me by Perry Fuller.

Q. You had never seen him before that time?

A. Not to my recollection.

Q. Did you at any time have any conversation with Fuller as to his means, or his antecedents?

A. I don't recollect that I did any particular time, unless it was at that time. I know Mr. Fuller said to me that Hayes had been in his employ or had been a partner of his—I don't know but both—and that he was the right kind of a man, safe, &c. That all happened, I think, at the same interview. I have no recollection after that of having spoken a word to Perry Fuller of Mr. Hayes.

Q. Did you have any conversation with General Steadman as to Hayes' means?

A. Not a word.

Q. I forget whether you stated that you sold these goods on credit or for cash?

210 A. I sold them on time—on credit.

Q. What credit?

A. The bill was sold on 4 months, but Mr. Hayes, when he wanted to settle, said he would like to divide it and make it a little different time. He said he had been buying a good many goods, and didn't want his notes to come due all at the same time; and it would accommodate him if I would divide it in several payments and give him a little more time, which I did. I don't know how much; my books will show. I gave him a little further time than four months.

Q. Did you take his notes?

A. I did.

Q. You have the notes?

A. I believe the notes were sent for collection, where they were payable, in Ottawa, and I think they were not returned, but I have a record of them.

Q. I' whose possession?

A. I sent them to the bank for collection, where they were made payable, as is my custom.

Q. You havn't received them back?

A. I won't be positive; they may have been returned, and may not; they are not all matured; those would not be sent back until they were matured.

Q. Did you have any endorser on the notes?

A. I did.

Q. Who was the endorser?

A. Perry Fuller.

211 Q. How did you come to get his name on the notes as endorser?

A. When Mr. Hayes came in and said, or some one had said to me, that Mr. Fuller had endorsed some notes, I said Very well, if that is so, probably he will endorse for us; and I told my book-keeper to draw the notes payable to the order of Perry Fuller, and he took them up at Fuller's hotel where he was stopping; and, I presumed, Mr. Fuller being an old acquaintance of mine, and if he endorsed Hayes' notes for anybody, he would do so for me, and the notes were so taken up, and Mr. Fuller endorsed them. I never had a word of conversation with him about it. I never asked Mr. Fuller to endorse the notes; I sent them to his hotel by my young man. It was the night he was going to leave and that was the reason I thought it had better be done promptly in that way.

Q. Did you have any conversation with Hayes on the subject of Mr. Fuller's endorsement?

A. I think when Mr. Hayes signed the notes, I said to him "I understand that Mr. Fuller is endorsing some of your papers and I trust he will endorse ours;" and he said "I have not asked him to do it, but I presume if you ask him he will do it," & I then asked him in the manner I have stated. I think I did not see Mr. Fuller except at this one interview, according to my best recollection. I didn't see Mr. Fuller afterwards, unless I passed him in the street or so.

Q. At what bank in Ot'awa were these notes made payable?

A. They were payable at a bank, a firm, I think it was Elder & Company; beginning with "E," I know.

212 Q. Did you know anything or were you informed as to whether Perry Fuller's son was connected with that firm.

A. I understood that Perry Fuller's son married a daughter of the banker. I think that, during the conversation that I had with Mr. Fuller at that time in my store, it was spoken about, his affairs, and I commenced to talk with him on family affairs, and he said that one of his sons had married the daughter of a banker out at Ottawa, and spoke to

me as to his prospects being very fine. That was the way I knew he was there.

Q. Did you have any conversation with Hayes as to who would be interested with him, or who would assist him in that business, which he intended to start at Ottawa?

A. Not a word.

Q. Did Hayes state to you the amount of his means—what it amounted to?

A. He told me that he had made a statement of his pecuniary condition to Buckley, Sheldon & Company, and desired that I should go there and I would get a correct statement of his position, and that was the only statement he made.

Q. Did you make any memorandum of this or the statement you got of Buckley, Sheldon & Company?

A. I don't think I did.

Q. Did you personally go to Buckley, Sheldon & Company?

A. I did; I had a long conversation with them.

Q. Will you please annex to your deposition copies of the notes of Hayes, with Fuller's endorsement, which may remain in your hands?

A. I can't make copies of them from my books. They may not
213 be exactly word for word, but they are near; I can write it from my books which I presume will be nearly exact. I will furnish that.

Q. Have you had any negociations or any interviews with Hayes or Fuller since you heard of the attachment against these goods?

A. I think after the goods were attached, that Hayes returned to New York, having left for the Western country; when he had learned the goods were attached, he returned to New York, and I think I saw him once, but only for a moment.

Q. Have you had any communication or negociation with Fuller since that time?

A. Not a word.

Q. Will you please state with whom you conversed at Buckley, Sheldon & Co's., when you went there to make inquiries about Hayes?

A. With Mr. Buckley, Mr. Sheldon, and Mr. Wheeler, all three; they are all members of the firm.

Q. What did they state to you upon the subject of Hayes' means?

A. They showed me a memorandum that they had taken from Hayes, and that memorandum made note of the different pieces of property Mr. Hayes owned. He held some real estate in the State of New York. He had some bills receivable, and he had an interest in some steamboat, and he had some cash or cash securities, altogether footing up something over $40,000, not 50, but over 40; I am speaking from recollection.

Q. What was the name of the steamboat?

214 A. I can't give you that, I did'nt take *take* that; I presume they can furnish you a detailed statement; I haven't it.

Q. Did they make any statement to you at that time about his connection, or any connection, between Hayes and Perry Fuller?

A. There was a conversation between myself and the parties, having both of us sold Perry Fuller, for years, a great many goods. We talked about the embarrasment of Fuller, and that he had lost or wasted a large estate, and was probably execution proof; that neither of us would credit *it*. And then the conversation drifted with this man, Hayes; that he had succeeded to a certain extent to Fuller's business, and had been at one time in Mr. Fuller's employ, and had understood it well,

thoroughly, and was going to follow more or less the trade that Mr. Fuller followed when we sold him, and they had no doubt of his entire success, being entirely responsible and thoroughly acquainted with what he was going to do. That was the drift of the conversation between onrselves.

Q. Was anything said as to the claims of the United States Government against Fuller?

A. I wouldn't be positive what conversation turned the points, but it was that Fuller had become thoroughly embar'assed, and had been sued, and I believe attachments levied against him, as I understood, against his bank account in the City of New York; so much embarrassed, that neither of us would credit him at all, although we had been the very houses that sold him a great many goods. I presume Fuller has owed us at one time 100,000—us and Sheldon, Buckley
215 & Company—different houses here.

Q. What reason had you for obtaining the endorsement of Fuller upon Hayes' notes?

A. Simply because some one remarked to me that Fuller had endorsed Hayes' note, and we always went upon the principle to take all the endorsements we could get, if they are not all good. It was simply a mere question; I did'nt seek it at all.

Q. Although at the time you didn't regard Fuller's endorsement as of any value?

A. No; not particularly valuable. I believe, at the time, there were executions against him here in town, or at least I so understood it.

Q. Was anything said then on the subject or to the effect that Hayes was to continue to carry on the business, in which Fuller had been previously engaged; state anything that was said on that subject.

A. There was nothing said about his carrying on the business, in which Fuller had been engaged, but he was to follow the same line of trade, according to my recollection. We never sold Mr. Fuller goods in that town. We sold him at Little Rock, Arkansas, and other towns, not in my mind, but not in Ottawa.

Q. But the same kind of business was to be started in Ottawa?

A. Yes, sir; selling goods to Indian traders, to Indians themselves. They never have a stationary place. They follow up where the Indians are going to be paid off.

216 Q. Was anything said as to Hayes' having assistance, or taking the advice of Fuller in that business?

A. Not a word. I should judge Mr. Hayes is a man most 40 years of age.

Q. Was anything said, or did you hear anything from Fuller, as to Fuller individually having any interest on that business in Ottawa?

Q. Not one word; never heard it mentioned, until here this morning.

Q. Did you have any talk with Fuller himself, as to those attachments, or as to the claims of the Government against him?

A. Not a word. Haven't seen Fuller since that first interview, according to my recollection.

Q. Do I understand you to say that if you were dealing with a merchant whom you knew or believed to be perfectly sound, perfectly responsible, if you heard that his property had been attached as the property of another man, that that would, in your judgment, destroy his credit with you?

A. No, sir; that question—you must give me a little latitude. If I sold a man, who bought as many goods as he had capital in the business, and those goods were seized as the property of another, it cer-

tainly would destroy his credit with me, because his ability to pay would be locked up in suit; but if it was a moderate bill of goods, and the amount was not large, I should not pay any attention to it.

Q. Then you understood that *Hughes* had bought to about
217 the extent of his means?

A. My impression was, that Mr. *Hughes* had bought a liberal amount of goods, as many as $30,000, and upwards, for Buckley, Sheldon & Company told me that they had sold him about 17 or $18,000, & I learned through other houses, they had sold him, altogether, 10 or $12,000, so I had got information that he had bought $30,000 or more; which is a large amount of goods, and being seized as the property of another, and Mr. Hayes being obligated to pay for them, would certainly ruin his credit with me; what other merchants would do, I don't know.

Redirect:

Q. I understood nothing was ever said by you, in regard to having Fuller endorse the notes until the bills were made out?

A. Yes, sir; and the goods shipped.

Q. And then it was done, in consequence of your having heard that he had endorsed for others?

A. Yes, sir; if he had not endorsed the notes, I should have shipped the goods the same.

Q. You did'nt understand that he had any business with Fuller; it was only in the same line of business?

A. That is the way I understood it; I never had any knowledge that Fuller had any business in Ottawa.

Q. It was merely that line of business that Fuller had been engaged in?

A. The line of business that Fuller had been engaged in, and Mr. Hayes, in Fuller's employ, if not a partner of his. My
218 recollection is, that Mr. Fuller said that Mr. Hayes had some time had an interest with him, but I wouldn't be positive about that.

Q. Did you understand that he had any interest with him, or in any way was connected in business with him at that time?

A. Mr. Fuller told me that Mr. Hayes was going to buy goods for himself at this time.

Q. You did'nt understand that he had any connection with Fuller at this time?

A. I did not.

Q. Was the firm of Buckley, Sheldon & Company well known in the city?

A. Yes, sir; my acquaintance with them being about 25 years.

Q. And you had confidence in what they said?

A. Yes, sir.

GEORGE P. BRADFORD.

And, annexed to the foregoing deposition of George P. Brandford, are the following exhibits, each marked Exhibit No. 3, and are in the words and figures following, to wit:

$778 95.100.] NEW YORK, *Aug. 25th*, '69.

Five months after date I promise to pay to the order of Perry Fuller, seven hundred & seventy-eight $\frac{95}{100}$ dollars, at office of P. P. Elder & Co., Ottawa, Kansas, value received, with ex. on N. Y.

219 No. 1624. Due Jan'y 28th.
(Signed) W'M HAYES. (Over.)

(Endorsed:) Perry Fuller. Geo. P. Bradford & Co., N. Y. Pay to the order of P. P. Elder & Co. For collection. James M. Gray, cash.

(Copy.)

$800 00.] NEW YORK, *Aug.* 25*th*, 1869.

Three months after date I promise to pay to the order of Perry Fuller eight hundred dollars, at office of P. P. Elder & Co., Ottawa, Kansas, value received, with ex. on N. Y.
No. 1623. Due Nov. 28th.
(Signed) W'M HAYES. (Over.)

(Endorsed:) Perry Fuller. Geo. P. Bradford & Co., N. Y. Pay to the order of P. P. Elder & Co. For collection. James M. Gray, cash.

(Copy.)

$800 00.] NEW YORK, *Aug.* 25*th*, 1869.

Seven months after date I promise to pay to the order of Perry Fuller eight hundred dollars, at office of P. P. Elder & Co., Ottaw', Kansas, value received, with ex. on N. Y.
No. 1625. Due March 28th.
(Signed) W'M HAYES. (Over.)

(Endorsed:) Perry Fuller. Geo. P. Bradford & Co., N. Y. Pay to the order of P. P. Elder & Co. For collection. James M. Gray, cash.

GEORGE P. BRADFORD. GEORGE H. WELLS. JOHN E. COWLES

NEW YORK, *Aug.* 25, 1869.

Mr. W'm Hayes, Ottawa, Kansas, bought of Geo. P. Bradford & Co., 349 Broadway, 71 & 73 Duane st. Terms: Note, mo's, payable at bank, with exchange on New York,
220 or cash, 5 per cent. in 30 days.

8097	6 super beav. W. coats	14 50	87	
8022	6 blue " sacks	13 50	81	
808889	6 mix. cass. frocks	11 00	66	
802789	6 f'cy " suits	13 50	81	
809, 3, 4, 5	6 " " "	14 00	84	
8107, 99455, 95	12 D. & T. " "	11 00	132	
2472	6 f'cy " sacks	8 25	49	50
7665	6 S. M. " "	8 50	51	
8159	3 beaver "	9 50	28	50
7891	6 bl'k clo. "	5 00	30	
8111	6 Union cass. "	4 25	25	50
7543, 46	6 mix. " "	4 50	27	
8109	6 f'cy satt. "	4 25	25	50
8066	6 " " "	3 75	22	50
8117	6 " " "	3 50	21	
8664	6 bl'k doe. pants	6 75	40	50
7910	6 " cass. "	3 00	18	
8087	6 " " "	2 25	13	50
7999	12 f'cy " "	5 50	66	
7957	3 " " "	6 00	18	
7981	3 " " "	6 00	18	
6070	9 " " "	4 25	38	25
7653	6 mix. " " job	2 87½	17	25
7549	6 " " "	3 00	18	
7547	6 " " "	2 62½	15	75
8114	6 U. " "	2 37½	14	25
221 8116	6 " " "	2 50	15	
8124	12 f'cy satt. "	1 83½	22	50
7636	6 jean "	2 00	12	
7764	6 " "	2 00	12	
8010	12 cott. "	1 62½	19	50
7666	2 f'cy cass. vest	2 75	5	50

	Forward			1,175 50
8098	2 bro. beav. vests		3 75	7 50
8024	2 blue " "		3 50	7 00
8100	2 mix. cass. "		2 75	5 50
8089	2 " " "		2 75	5 50
8043	6 f'cy silk "		4 00	24
7543	6 bl'k cass. "		2 50	15
8086	6 " satt. "		1 50	9
8140	6 fig'd Ital. "		2 50	15
7859	3 drap. d'Eta sacks (del'd)		7 25	21 75
80, 77, 4, 80, 13	1 blue Tricot suit (del'd C. W. Nelson)			25
7952	3 bl'k cap. sacks		9 00	27
7433	5 f'cy " "		10 25	51 25
7487	3 " " "		9 00	27
74, 86, 7, 8	3 " " suits		18 00	54
7484	4 " " sacks		9 25	37
8165	3 " " W. coats		7 00	21
7469	3 " " sacks		8 75	26 25
7284, 99	3 " " "		8 75	26 25
742930, 51	6 " " suits		16 25	97 50
8047, 8	3 " " P. & V		8 75	26 25
7160	3 " " p'ts		5 75	17 25
222 7383	4 " " "		5 50	22
8002, 5	4 " " "		5 00	20
7872	3 " " "		4 75	14 25
7391	4 " " "		5 25	21
7809	6 " " "		4 25	25 50
7400	2 " " vests		2 62½	5 25
7486	3 " " "		2 62½	7 87
8139	2 sup. chin. O. coats		18 50	37
8136	3 " " "		18 50	55 50
8137	2 blue " "		17 50	35
8063	3 dreb " "		14 00	42
8134	3 bro. " "		13 25	39 75
8084	4 bl'k bea. "		10 00	40
8180	2 " " "		12 00	24
8016	4 mix. satt. "		7 00	28
8044	4 " " "		6 50	26
6755	2 " " "		7 75	15 50
8143	4 " " "		7 75	31
8006	4 bl'k U. bea. "		8 75	35
8033	4 " " "		6 75	27
7343	2 " " "		21 00	42
	1 suit to order, Mr. Hayes			55
	Case, straps, cart., stamp, &c			8 83
				$2,378 95

GEORGE P. BRADFORD.

Also the deposition of Thomas T. Buckley.

223 *Deposition of Thomas T. Buckley.*

The deposition of Thomas T. Buckley, taken before H. C. Gibson, a notary public in and for the county of New York, and State of New York, at the city of New York, on the 12th day of February, A. D. 1870.

THOMAS T. BUCKLEY, a witness on behalf of the plaintiff in the above-entitled action, being examined by E. A. Doolittle, esq'r, counsel for plaintiff—M. W. Divine, esq'r, appearing for defendants—says:

Q. Where is your place of business?

A. Formerly 75 and 77 Leonard street, now 380 Broadway, New York City.

Q. What is your business?

A. Dry goods.

Q. How long have you been in business in the city?

A. Some 30 years.

Q. What is the name of your firm?

A. Buckley, Sheldon & Co.

Q. Do you know William Hays, the plaintiff, in this action?

A. I do.

Q. Did your firm sell him a bill of goods?
A. We did.
Q. Have you a copy of the invoice?
A. Yes, sir; sold him two bills.
Q. Have you got copies?
A. Yes, sir; one bill of goods that he purchased, *were* sold
224 on the 21st, 24th, 25th, and 27th of August; the next are on the sales-book; that bill of goods amounts to, with some $44 14 interest; $19,737 19, for which his notes were given us.
Q. On what time were they sold?
A. The first bill, 21st August, was sold for cash, $10,310 09; the balance were on 4 months. The next bill of goods was an invoice for a different purpose; it was sold on the 27th August, and amounted to $3,897 26. This last lot of goods, I believe, were attached in New York.
Q. By whom?
A. Attached by the sheriff. A messenger came from Martin & Smith, plaintiff's attorneys, stating that the' would like to have a memorandum, as to the value of this property that was attached. On learning from the messenger that they had been attached by an order from the National Bank at Washington, we told him that if he would return and bring us the number of the cases, and the packages that had been attached, we would give him the value of them. On his return with the numbers to us, I then ascertained that the property had been attached as the property of one Perry Fuller. I gave him a memorandum of the value of the cases so attached, with a message to Martin & Smith, to the effect that there must be some mistake on their part; that this was not the property of Perry Fuller, and he had no interest in it.
Q. About how soon was this after they were attached?
A. I think I ascertained that these goods were attached on the Saturday, but I did not know anything about that until Monday or
225 Tuesday; I think it was Tuesday morning that I heard; sent message to them about Wednesday or Thursday—sometime after Monday.
Q. Were you applied to by us to know whether you would take back the goods?
Q. Yes, we were; and we answered you that the goods attached here were sold for a special purpose—trading with the Indians; that they had no present market that would warrant us in taking them back for any moderate reduction, and that we would have to carry them until we had another opportunity to sell them to some other trader of that kind.
Q. Those chances did not occur very often?
A. No, sir.
Q. Do those opportunities occur often?
A. Not for this specific kind of goods.
Q. When you sold those goods were they of the market value of the invoices?
A. Yes, sir.
Q. That was the reasonable market price at that time?
A. Yes, sir; that was the price they were sold for?
Q. Mr. Hayes had purchased a large invoice besides, and, in order to dispose of these, he would have to assort up from the previous stock purchased to mix with his stock?
A. A trader, making the purchases, would purchase very nearly the same things as are here represented in this bill, but in order to complete

that assortment, he will have to purchase largely of other things
226 to complete his stock for that kind of business. No Indian cloths or blankets; these he would take up out of his other goods.

Q. And it would be necessary to fill up from the other *other* goods, in order to make these saleable, even for this barter trade with the Indians?

. I mean the previous stock we had sold Mr. Hayes; they were sold to Mr. Hayes at the price in the invoices, and that was their fair market value.

Q. To whom were these goods sold and billed?

A. William Hayes?

Q. To whom was the credit given?

A. William Hayes.

Q. Did you know any one—any one else in the transaction?

A. We did not.

Q. Where were the goods sent and how marked?

A. They were marked (H) Ottawa, Kansas, White-line, care Mississippi River Packet Co.

Q. How long had you known Mr. Hayes?

A. Some four or five years.

Q. What did you know about his employment or business for the four or five years previous?

A. When I first became acquainted with him he was a clerk in the Department of the Interior, I think, at Washington; then he entered into the employment of P. Fuller & Co., & McDonald & Fuller. He was in the employ of both, and for a time was their book'eeper here in New York; and, as he stated to me, he had an interest in some of the Indian contracts in which P. Fuller, & McDonald & Fuller were engaged
227 in, when they were engaged in that business some two years & more ago. I don't think they have been engaged in that business for two years past.

Ques. Did Hayes say at the time he made these purchases anything as to his then being in business with Fuller?

Ans. He said that he had left Fuller & Co.'s employ along in March, 1869, after his return from New Orleans; that he had had a settlement with them and they turned out to him property in payment for money that he had loaned the firm of P. Fuller & Co., and for his profits in some contracts he was interested in and for the balance of his salary which he had not drawn for. In all they owed him about $30,000 over & above the money they paid him, which amount they had secured to him along about April, 1869; that he consider' himself then as worth fully $50,000. This statement was made to us Aug. 20th, 1869.

I have examined the invoices now produced & know them to be correct, and they are duplicates of the invoices given to Hayes at the time of sale.

Which invoices are as follows:

Tho. T. Buckley.
W'm C. Sheldon.
W'm R. Welling.
DeWitt C. Wheeler.
J. H. Boynton.
S. A. Frost.
J. H. Butts, jr.

NEW YORK, *August* 21, 1869.

M. W'm Hayes, Ottawa, Kansas, bought of Buckley, Sheldon & Co., No. 75 and 77 Leonard street, near Broadway.

Claims for damage or deficiencies to be made by mail or otherwise, within ten days after receipt of the goods. Terms cash. Note at bank. (Duplicate.)

228

Case 10.			
10 Marlbon stripes	471[2]	17	80 15
1 Pittstan stripe	69	11[2]	7 93
7 Sheridan "	416[2]	14[2]	60 39
10 superior drill	407[1]	16	65 16
2 Otis Aka. denim	107[3]	28[2]	30 70
2 Warren B. "	117[2]	23	27 02
1 Marlbon do. "	91	19	17 29
Case & straps			1 50
Case 11.			
2 Amosk. Canton	80[2]	19	15 29
1 Ellerton N. "	38[2]	31	11 93
1 " V. "	35[2]	25	8 88
2 " N. "	82	28	22 96
2 Boston "	102	21	21 42
2 Ellerton V	84	25	21
2 Victory	80	28	22 40
1 Hamilton Canton	333	272	9 08
15 blue drilling	658	22	144 92
2 Bedford	121	16	19 36
2 Haymakers' bro	120[3]	19	22 93
Case & straps			1 50
Case 12.			
2 Haymakers' blue denim	119[3]	19	22 74
2 Amoskeag " "	121	31	37 51
2 Workingmen's " "	111[3]	29[2]	25 08
4 Clark's " "	186[3]	31	57 88
8 Imperial ticks	379[2]	17[2]	66 40
229 Case & straps			2
Case 13.			
3 Omega ticking	135[2]	32[2]	44 11
5 Amosk. D. "	250	22	55 "
4 B. S. & Co.'s "	182	28[3]	51 87
Forward			974 40

Copy correct: THO'S T. BUCKLEY.

Forward			974 40
3 Methurn ticks	142[1]	30	42 67
2 Imperial ticks	94[2]	17[2]	16 33
Case & straps	2		2
Case 14.			
10 Indian Orchard W. gro	424[1]	12	50 91
10 " " L. "	457[2]	11	50 32
3 Maxwell "	124	20	24 80
10 Ellerton D. "	428[2]	14	59 99
5 Saranac R. "	216[1]	16	34 60
7 Gt. Falls E. bro. "	269[3]	16	43 16
Case & straps			1 50
Case 15.			
5 Amoskeag (46 in) blue	221[2]	21	46 51
5 Glasgow "	237[3]	28	66 57
8 Pearl River "	368[2]	9[2]	35
4 Allendale 10-4 bro	149[2]	52[2]	78 48
5 Ellerton 10-4 blue	191[2]	55	105 32
2 D. O. Val "	86[1]	21	18 11
Case & straps			2
Case 16.			
230 18 Montgomery blue	1,012	12[2]	126 50
7 Pearl River ¾ "	321[1]	92	30 51
22 ¾ Ballou "	1,065[1]	13[2]	143 71
7 Waverly & Bamsey "	387[1]	11[2]	44 54
Case & straps			2
Case 17.			
9 social bler	484	15[2]	75 02
10 Kearsarge	412[1]	22	90 69
13 Bamsley & Waverly do	724[3]	11[2]	83 39
Straps			38

(Written across the face in red ink:) Positively no goods taken back unless damaged.

	CASE 18.			
	29 Valley Falls & Albion blue	1,190[2]	14[2]	182 62
	Straps			38
	CASE 19.			
	4 Stark, AA ble'c'd crash, 25 ea	100	20	20
	4 " " brown " "	100	18	18
	4 " 44 ble'h " "	100	16	16
	4 U. S. B. bro. "	100	15	15
	Forward			2,501 41
	Copy correct: THO'S T. BUCKLEY.			
	Forward			2,501 41
	4 U. S. B. bleached, 25 ea	100	16	16
	4 U. S. huck "	100	20	20
	4 Stark f'cy " "	100	20	20
	4 Stevens bird-eye "	100	18	18
	6 Novelty crash	249[1]	12[2]	31 15
	6 Ports. P	270	9[2]	25 65
	25 Stark a-boys		47[2]	11 88
231	Case & straps			2
	3 cases Arnold prints $\frac{2260}{1756'}$ $\frac{2237}{1949'}$ $\frac{2228}{2037}$	6,725[1]	11	739 78
	3 bales Clarke's sheeting ₮5.244, 5,236, ₮5,251, 800 ea	2,400	07	408
	3 Well AA bro. $\frac{1049}{850'}$ $\frac{1052}{1042'}$ $\frac{1049}{1049}$	3,150	16	504
	2 " Waverly " $\frac{1081'}{₮77}$ $\frac{1027^2}{₮76}$	2,108[2]	12[2]	263 56
	4 Gibbon " ₮875, ₮876, ₮877, ₮880, y'ds 1,000 ea	4,000	13[2]	540
₮4648	1 " 6 lb. grey bl'k'ts	50	3 00	150
	BALE ₮20.			
	25 8 lb. grey bl'k'ts		4 00	100
	15 9 " " " "		4 50	112 50
	CASE 21.			
	19 Persian challis	676	16	108 16
	9 black & white delaines	315[3]	20	63 15
617	1 alpacca luster	37[1]	25	9 31
	3 green stripe armures	107[3]	20	21 55
	3 Tycon rep	108[3]	27[2]	29 87
	19 delaines	640[3]	20	128 15
	Straps			38
	CASE 22.			
	15 Shawnee ginghams	723[2]	12[2]	90 43
	10 Mahons	530[1]	20	106 05
	5 colored cambrics, H. C	225[1]	11[2]	25 89
	19 cambric colors	907[2]	10[2]	95 28
232	2 Glasgow ginghams	80[1]	16	12 84
	Straps			38
	Forward			6,153 37
	Correct copy: THO'S T. BUCKLEY.			
	Forward			6,153 37
	6 high-colored paper cambrics	276	13	35 88
	18 common " " "	814[2]	12	97 74
	6 Lansdale silesias	271[2]	16	43 44
	2 gingham, (Earlston)	82[3]	30	24 82
	2 pink, "	83[2]	37[2]	31 30
	9 warmer "	372	14[2]	53 94
	16 armures plain	567	21	119 07
	½ d'z. boulevarde skirts		48 00	24
	½ " fancy " "		60 00	30
	6 Grand Duchess		4 75	28 50
	Case & stripes			2
	CASE 24.			
70	3 apron check	189[3]	29	55 02
10	3 " "	195	26	50 70
9	3 " "	199[1]	22[2]	44 82
7	5 " "	340	17	57 80
8	5 " "	340[1]	20	68 05
	3 wigan	135[2]	16	21 68
	Case & straps			2
	CASE 25.			
	4 wigans	185	16	29 60
	1 bleached jacy'd diaper	43	35	15 05
	1 brown " "	43[2]	33	14 35

233	6 Canor C. jean	219	13	37 83
	6 Hallowell	268[2]	15[2]	41 61
	9 Kearsa'ge sat. jeans	402[2]	17[2]	70 43
	1 Hallowell, bleached	46[1]	15[2]	7 17
	8 p'r 2¼ pl. white blankets		6 50	52 00
	Case & straps			2
	Case 30.			
	23 p'r pl. white b'lk'ts		8 25	189 75
	Case & straps			2 25
$100	1 bale blankets:			
	20 p'r 3 pl. light blue blankets		9 00	180
	10 " 2½ " " "		7 00	70
	20 " 3 " scarlet		9 50	190
	2 wrappers			4
	$3637.			
	1 case Durrell prints	2, 195[3]	12[2]	274 46
$596	1 " Alhambra p. plaids	1, 972[2]	19	374 77
				8, 501 40
	Correct copy: THO'S T. BUCKLEY.			
	Case 36.			
				8, 501 40
	5 Richmond purple prints	225[1]	13[1]	29 28
	14 " " "	607[2]	13	78 98
	4 Cocheco robes "	170	15	25 50
	16 " fancy "	669[2]	14	93 73
	14 Merrimack D. "	566	13[2]	76 44
	4 Amer. & Lancaster green	177[2]	13[2]	23 96
	2 America check	93[2]	13	12 16
	2 Hamilton "	101	13	13 13
	Case & straps			2
	Case 37.			
	31 Freeman prints	1, 369	10[2]	143 74
234	9 Wamsuttas "	430	9[2]	40 85
	3 Nassau "	117	12	14 62
	1 Glencove "	45	82	3 85
	5 Laconia "	221	12	27 62
	5 plain calicos	233[3]	13[2]	31 56
	2 Wanngean shirting	97[2]	12	11 70
	1 Sprague purple	42[2]	12	5 31
	Case & straps			2
	Case 38.			
	5 Richmond shirting	204[2]	13	26 59
	5 Anchor "	231	12[2]	28 87
	1 Wamgan p't	23[3]	11[2]	2 61
	6 Ruby "	295[1]	13[2]	39 85
	25 Lancaster "	1, 197	12[2]	149 62
	14 Garner & Amoskeag	610[3]	12[2]	76 34
	2 Pacific black & white stripe	87	13[2]	11 74
	Case & straps			2
	Case 39.			
	25 black, wh't., & 2d	1, 083[2]	12	135 43
	12 Pacific p'ts	534	13[2]	72 09
	Forward			9, 682 97
	Correct copy: THO'S T. BUCKLEY.			
	Forward			9, 682 97
	6 purple & buff Pacific p'ts	258[2]	13	33 61
	6 pink "	273[2]	13[2]	36 93
	10 Allen prints	447[2]	12[2]	55 93
	Case & straps			2
$4041	2 hemp carpeting	201	35	70 35
235 4243	" " twill	201	35	70 35
	Case 44.			
	83 military coats		3 50	290 50
	Case & straps			2
In case 52	10 p'r 2½ p't scarlet bl'k'ts		7 50	75
				$10, 310 09
	Correct copy: THO'S T. BUCKLEY.			

Tho. T. Buckley.
W'm C. Sheldon.
W. R. Welling.
Dewitt C. Wheeling.
J. H. Boynton.
S. A. Frost.
J. H. Butts, jr.

NEW YORK, *August* 26, 1869.

Mr. William Hayes, Ottawa, Kansas, bought of Buckley, Sheldon & Co., Nos. 75 and 77 Leonard street, near Broadway. Claims for damage or defi'ency to be made, by mail or otherwise, within ten days after receipt of the goods. Terms note at bank. (Duplicate.)

	CASE 45.			
	5 p'r 10-4 Winthrop bl'k'ts		4 25	21 25
	5 " 10-4 Newich'k "		4 50	22 50
	5 " 11-4 Ontario		6 00	30
	50 Indian square shawls		2 00	100
63 x 126	6 home long shawls		5 00	30
67² x 135	36 " fancy "		5 50	198
" "	11 Walden "		6 00	66
72 x 144	13 " "		6 50	84 50
1320, 1328	2 Paris long "		7 50	15
152	1 Winter Queen do		8 00	8
236 37 x 37	50 shoulder shawls		95	47 50
85	5 ladies' zephyr B. "		2 50	12 50
376	1½ " " job "		24 00	30
15, 17	½ " " "		24 00	12
	11-12 Sontags		9 00	8 25
	4 knit cashmere Ind. do		7 20	28 80
0365	1 " " " "		3 00	3
23	1 wool comforts		1 87²	1 88
151	3 " "		2 25	6 75
764	3 " "		2 75	8 25
129	1 10-12 scarfs		4 50	8 25
	Case & straps			1 50
	CASE 146.			
	5 do. hickory shirts		7 50	37 50
W.	1 " overalls			10
B.	3 " "		6 00	18
O.	¾ " "		8 00	6
	3½ " grey dornet flan'l shirts		13 50	43 87
402	1 " California grey "			15
	5 " red flannel "		13 50	67 50
	5 " all wool grey "		13 50	67 50
	Forward			1, 009 30
	Correct copy : THO'S T. BUCKLEY.			
	Forward			1, 009 30
	1 dz. bro. knit jackets			14
50	3 " negligee shirts		7 50	22 50
523	2 " "		8 00	16
70	1 " " "			11
237 516	1 " " "			11
551	1 " " "			12 50
519	1 " " "			14
146	1 " " "			23 50
159a	1 " " "			23 50
2	1 " dill toe wool socks			2 75
	2 " knit toe shaker "		3 75	7 50
A. Ro.	2 " " "		4 75	9 50
	2 " warp socks		2 25	4 50
In bel.	2 " cotton socks (bro. & blue)		2 00	4
	1 " Falls Co. cot. rib'd			1 50
	1 " pink top			1 75
	3 " cotton hose (R. T.)		1 40	4 20
Improved.	2 " supen th'd top		1 60	3 20
730	1 " boys' comforts			1 25
150, 100	8 " im. silk h'dk'fs		3 00	24
	13 " boys' " (job)		1 00	13
48	8 " " "		95	7 60
43	1 " sporting h'dk'fs		3 50	3 50
	Case & straps			1 50
	CASE 47.			
450	2 dz. McClelland S. & D		12 50	25
216	2 " " " "		12 00	24
212	1 " wht. rib'd "		12 00	12
100	2 " Peach-blow rib'd do		10 50	21
500	2 " plain white "		11 00	22
8	4 " " S. & D		7 00	28
9	4 " extra stout do		8 50	34
238	3 " Excelsior		8 50	25 50
100	4 " com. mixed		5 50	22
188	6 " wh't m'r. finish hose		2 00	12

B. & U.	2	" ladies' w'ht mer. vests		15 00	30
110	1	" white muslin dress shirts		12 00	12
200	1	" " " " "		15 00	15
		Forward			1,529 55
		Correct copy: THO'S T. BUCKLEY.			
		Forward			1 529 55
600	½	dz. wh't dress shirts		25 00	12 50
1000	½	" " " "		32 50	16 25
2000	½	" " " "		34 00	17
200	2	" wool scarfs		2 25	4 50
100	2	" " "		2 75	5 50
105	2	" " "		3 50	7
115	2	" " "		4 50	9
84	4	" wh't & mole col'r & wh't mer. hose		2 00	8
87	2	" " & col'd "		2 50	5
A. K. O. 88	3	" merino "		3 25	9 75
523	1	" l'd's' mer. "			3 25
600	3	" p's' Eng. ½ hose		5 00	15
89	1	" l'd's' wht. wool "		4 50	4 50
	1	" 30 *guage* fashion do		8 50	8 50
3 & G. wht.	2½	" misses' cash. hose		2 50	6 25
X X	2½	" men's f'cy wool		2 75	6 87
E. stripe.	2½	" " " "		2 75	6 88
90	2½	" " " "		2 00	5
205½	8	" child's wht. cot. hose		1 75	14
239	1	" c'ts hem. h'dk'fs in boxes, 3 50 / 7 — 4 25 / 9 — 4 75 / 10 — 7 00 / 14 — 7 50 / 15			27
8	3	doz. c'ts th'd h'dk'fs		3 75	11 25
3	2	" " " "		2 75	5 50
		Case & straps			2 "
		CASE #48.			
	2	p'c's tow., wash damask	68³	87²	60 14
60 in	1	" dice	36	75	27
54 "	1	" "	36	60	21 60
9-4	1	Union bed	45	45	20 25
7-4	2	" Bloom	89²	37²	33 56
2171	1	wht. damask	26	1 10	28 60
696	1	" "	26	1 25	32 50
18 x 24	4	dz. shuck towels		2 00	8
18 x 34	3	" " "		2 75	8 25
20 x 36-17	3	" " "		3 50	10 50
20 x 40	2	" " "		4 50	9
12	6	" damask napkins		1 25	7 50
2	6	" " "		2 25	13 50
		Forward			2, 020 45
		Correct copy: THOMAS T. BUCKLEY.			
		Forward			2, 020 45
	6	do damask napkins		2 50	15 "
30	1	pc. Swiss mull	20	22²	4 50
20	1	pc. Swiss mull	20	32²	6 50
50	1	pc. " "	19³	45	8 89
24	1	Bishop lawn	20	35	7
26	1	" "	20	40	8
240 28	1	" "	20	47²	9 50
34	3	checks	60	22	13 20
64	2	"	40	27²	11
68	2	"	40	32²	13
72	2	"	48	36	14 40
21	1	jaconet	20	20	4
31	1	"	20	23	4 60
41	1	"	20	26	5 20
51	1	"	20	29	5 80
5	1	"	20	32	6 40
71	1	"	20	37	7 40
91	1	"	20	44	8 80
8 x 10	6	red Union cloths		70	4 20
10 x 12	6	" " "		85	5 10
8 x 10	4	linen "		1 15	4 60
9 x 11	4	" "		1 25	5
10 x 12	4	" "		1 60	6 40
9 x 11	4	" "		1 75	7
	10	p'c's cotton diapers		1 40	14
	2	doz. 7 50 / 20 — 8 50 / 25 — 9 50 / 30 — ½ Sp. 3 in. skirt			51
	2	" 30 Dutchess		12 00	24
		Case & straps			2
		CASE 49.			
	8	dz. wht. & ass't'd F'ch bone corsets		10 50	84
	2	" Excelsior do		19 50	39

		1	glove fitting corset			22
	524, 349	14	C La Favorite paper collars		1 35	18 90
		3	p'c's Scotch diapers		3 00	9
241	250	5	" " "		2 75	13 75
	139	7	d'z. g'ts' Dickens lin. collars		2 00	14
		13	C A. Y. R. paper "		1 80	23 40
	100	1	" l'd's' quck Eugenie "		1 50	1 50
			Forward			$2,522 49
			Correct copy: THO'S T. BUCKLEY.			
			Forward			2,522 49
	In boxes.	3	boxes fancy collars		2 75	8 25
		10-12	gross l'di. emb'd P. cuffs		2 50	2 09
	880	1	" " paper collars			2
		1	C Coffman's P. collars		3 00	3
	L'ds.	2	gross standing "		1 50	3
		1	" " in stripes		75	75
		4	d'z. g'ts' W. L. h'dk'fs		3 25	13
	8	2 5-7	p'c's pongee "		7 50	20 36
		5	" serge		3 50	17 50
	1-28	6	" pongee		6 50	39 00
	81	1	" "			5
		5	" French job		7 50	37 50
	26	14 3-7	" " "		5 50	79 34
	211	2	d'z. L. C. h'dk'fs		1 10	2 20
	222	2	" " "		1 25	2 50
	241	2	" " "		1 75	3 50
	27	2	" " "		2 50	5
	29	2	" " "		3 00	6
	205	2	" " "		2 00	4
		1	doz. L. C. h'dk'fs, $\frac{3\ 50}{31}$ $\frac{4\ 00}{76}$ R $\frac{4\ 50}{71}$			12
242	181	2	" g'ts' do.		2 25	4 50
		3	" Sc. lawn		85	2 55
			Case & straps			2
			CASE 50.			
		6	boxes set yarn, 80 ea		4 00	24
		3	" " " 50 ea		2 50	7 50
	42	5	doz. sailor collars		1 75	8 75
	99	5	" shake "		1 25	6 25
	49	2	" f'cy edge do.		1 50	3
	140	1	" mourning "		1 50	1 50
			Forward			2,843 03
			Correct copy: THO'S T. BUCKLEY.			
			Forward			2,843 03
	24	2	d'z. emb'd & corded collars		2 00	4
		3	" heavy corded "		2 25	6 75
		1	" f'cy ruffle			2 50
	119	1	" tuck			1 50
	830	1	" l'd's' linen cuffs			3 50
	104	1½	" " " "		2 50	3 75
	90	½	" " " "		4 00	2
	34	½	" " " "		4 50	2 25
	225	1	" mourning "			4 50
	228	1	" " "			4 50
	W 20	1½	" " "		4 50	6 75
	537	1	" plain cuffs		2 75	2 75
		1	" fancy ruffle		4 50	4 50
		5	" Queen Eliz. collars		2 75	13 75
243	14	1	" babies' shoes—1 p'r del'v'		3 00	3
	17½	2½	" misses' f'cy wool hose		3 50	8 75
	202	2½	" " " "		3 00	7 50
	208	2	" large do		3 75	7 50
	206	1	" infants' boots		2 00	2
	85	4	" f'cy lamb wool hose		1 25	5
	60	1	" l'd's extra size "			3
		1	" " fine cot. "			5 50
	1111[50]	1 11-12	" fancy tube ties		2 50	4 79
	9119	2	" " "		3 00	6
	90	1 10-12	" " " "		4 50	8 25
	100, 110, 91	1 5-12	" " " "		4 50	6 37
	9114 c	1	" black " "			3 50
	1000					
	91, 140 c	1	" " "		3 00	3
	302, 303	1	" " "	3 00	3 25	6 25
	403, 405	1	" " "	3 50	3 75	7 25
	304, 307	1	" " "	3 50	4 50	8
	1407	1	" " "			4 50
		7-12	" spring stocks		9 00	5 25
	1	½	" f'cy bl'k bows		3 50	1 75
	2	3	" " " "		2 00	6
	3	½	" " " "		5 50	2 75

4	1¼	" fancy "		5 50	8 25
6	1	" batswing do.			4 50
		Forward			3,034 69
		Correct copy: THO'S T. BUCKLEY.			
		Forward			3,034 69
500	1 doz.	black bows		3 50	3 50
244	2 "	" "		3 00	6
44	2 "	men's driving gloves		7 50	15
148	1 "	l'd's' buck. gauntlets			12
100	1 "	" super. do.			15
20	3 "	men's Berlin "		3 50	10 50
1451	2 "	" col. & list		2 00	4
6026	1 "	g'ts' mixed Berlin			6 50
1202	1 "	plain "			6
134	2 "	l'd's' col'd gloves		1 75	3 50
277	5 p'c's	Scotch diapers		1 50	7 50
110	2 "	" "		1 40	2 80
178	2	doz. child's Berlin gloves		3 75	7 50
1313, 1311	3 11-12	" wool lined "		2 75	10 77
8975	1½	" col'd "		3 50	5 20
412	4	" " "		3 75	15
1134	1	" l'd's' bl'k gauntlets			5 50
2920	1	" col'd do.			7 50
4533	1	" " "			5
2789	1	" Duchess			6
104	2	" misses' gauntlets		4 28	8 50
14	2½	" child's wh't. cot. do		1 35	3 37
9014	3	" B. H. E. muslin h'd'fs		2 75	8 25
30	4	" Im. St. S. "		2 25	9
10	10	" plain border muslin		2 25	22 50
380	5	" " " "		2 25	11 25
9	5	" " " "		1 50	7 50
1	2 p'c's	Indian twill, 2617	53	25	13 25
474	2 p'c's	linen diaper		1 75	3 50
245 483	6 "	" "		225	13 50
		Case & straps			2
		CASE 51.			
	2	Mansutt	58²	65	38 05
	2	Cardington	95²	34	32 47
	2	(20 & 25 springs) Duchesse skirts	8 00	10 00	36
21	2	Irish linen	72	37²	27
313	2 "	"	68	48	32 64
314	2 "	"	71²	65	46 47
		Forward			3,504 71
		Correct copy: THO'S T. BUCKLEY.			
		Forward			3,504 71
46	1	Irish linen	36³	69	25 35
47	1		32	80	25 60
19	1		32	1 00	32
	2	India twill	54	25	13 50
	1	buff brilliant	27²	30	8 25
56	1	fancy veil	17³	50	8 88
8383	1	super. do	16	65	10 40
41	3 dz.	white cotton hose		1 50	4 50
38	"	" " "		1 75	5 25
195	"	" " "		2 25	2 25
55K	"			2 00	2
1843, 1845	4 "	wh't' cot. "		3 25	13
145	2 "	" " "		4 00	8
96	2 "	" " "		3 75	7 50
382	2 "	" " "		3 50	7
305	2 "	" " "		3 50	7
246 308	2 "	" " "		3 50	7
186	2 "	" " "		4 00	8
11	2 "	" " "		4 25	8 50
500	1 "	" " "		4 50	4 50
179	3 "	men's bro. sacks		1 50	4 50
100	3 "	" " "		1 75	5 25
700	5 "	" " "		2 00	10
750	5 "	" " "		2 25	11 25
110C	2 "	bro. ½ "		2 75	5 50
9½-3	1 "	f'cy "		3 50	3 50
241-10	1 "	" "		3 75	3 75
339-10	1 "	" "		3 75	3 75
	2 "	men's		2 75	5 50
	3½ "	g'ts' paper cuffs		4 00	14
		Case & straps			2
		CASE 52.			
	17	coats		3 50	59 50

1¼	9	trimming ribbon		57²	5 07
2	8	" "		75	6 00
45	10 ea.	" "	1 05	1 25	23
3	6	" "		87²	5 25
		Forward			3,876 11
	Correct copy:	THO'S T. BUCKLEY.			
		Forward			3,876 11
2	19	taffeta ribbon		52²	9 97
3	20	" "		67²	13 50
4	15	" "		90	13 50
6	11	" "		1 37	15 12
247 9	7	" "		2 00	14
	2	dz. Alex. kid gloves		15 00	30
6½, 8	1	" Duchess " "		16 50	16 50
½	"	Micot " "		18 00	9
5–12	"	" " "		17 00	7 09
R	1	C Baden paper cuffs		4 00	4
	1	" dicker " collar		1 80	1 80
⅝	7	dz. napkins		1 65	11 55
	½	" en., misses' skirts, 8, 10, 12, 14, 16, 18, 3-7		37²c.	14 62
		6 00 7 00			
	2 dz.	25 30 1 in. 6 tape		18 00	26
7-4	6	madder h'dk'fs		2 25	13 50
		Case & straps			2
					$4,083 26

Correct copy:

THOMAS T. BUCKLEY.

Tho. T. Buckley
W'm C. Sheldon.
W'm R. Welling.
Dewitt C. Wheeler.
J. H. Boynton.
S. A. Frost.
J. H. Butts, jr.

NEW YORK, *August* 24, 1869.

Mr. W'm Hayes, Ottawa, Kansas, bought of Buckley, Sheldon & Co., No'. 75 and 77 Leonard street, near Broadway.

Claims for damage or deficiency to be made by mail or otherwise, within ten days after receipt of the goods. Terms, 4 mo's note at bank. (Duplicate.)

		CASE 26.			
	1	bro. Holland	45	33	14 85
A1	2	alpacca	1 01¹	35	35 43
3591	4	"	2 03¹	30	60 97
248	2	plaid poplins	52	37²	19 50
	11	green plaid	1 79	35	62 65
	3	black & white check poplins	96²	22³	21 71
700	3	"	1 81²	18	32 67
5051	1	sherry poplin	57²	32³	18 68
1052	1	alpacca, brown	48	47²	22 80
30	1	black "	50	52³	26 25
IC1	1	" "	48²	67²	32 73
24	1	super. do.	42¹	85	36 33
104	1	" "	47	47²	22 32
7	2	black do.	97³	40	39 10
118	2	sherry alpacca	99	55	53 45
3555	2	poplin "	1 01³	60	61 05
1543	2	" "	93³	52²	49 22
1583	1	" "	49	37²	18 37
1680	1	" "	53	37²	19 87
125	1	" "	41	42²	17 42
	2	Union French merino	51	37²	19 21
	2 dz.	Queen West skirts		14 80	29
	24	children's "		1 20	28 80
		Case & straps			2
		CASE 27.			
	1	dz. Queen Mary		27 00	27
	1	Garner		19 50	19 50
1463	1	farmers' satin	46¹	85	39 31
665	1	" "	47¹	60	28 35
401	1	" "	47²	50	23 88
	7	Opera flannels	1 14¹	62²	71 40
		Forward			953 82
249	Correct copy:	THO'S T. BUCKLEY.			

(Written across the face in red ink:) Positively no goods taken back unless damaged.

	Forward			953 82
	2 common linsey	70	27^{2}	19 25
	3 colored	121	27^{2}	33 27
	5 Cumberland	342	21^{2}	73 53
	5 Germantown do.	299^{2}	17^{2}	52 40
	1 cottonade	50^{2}	25	12 63
	Case & straps			2
	CASE 28.			
	2 Shaker flannel	113^{3}	50	56 88
1188	3 plain white do.	73^{2}	35	25 72
24	3 " " "	73^{2}	42	31 24
1735	2 domes, "	66^{1}	25	16 56
	3 Hampshire domes	110	30	53
1668	3 domes	98	30	29 40
1910	3 plain red	81^{1}	47	38 19
6	3 " "	89^{3}	27^{2}	24 68
12	1 " "	27	33	8 91
	1 " "	26	33	8 58
	1 " "	27	33	8 91
	Case & straps			2
	CASE 29.			
M. H.	5 red twill flannel	266	45	119 70
49	5 do.	265^{3}	40	106 30
1512	3 pl'n "	79	37^{2}	29 87
2678	2 yellow	53	47^{2}	25 18
	2 " do.	52^{2}	37^{2}	19 68
	1 panteloon canvass			9
250	1 extra Aberdeen	40	35	14
	1 " "	40	35	14
	1 " "	40	25	10
D'bl. width	2 Caledonia flannel	106^{3}	35	37 35
	3 grey do.	104	33	34 32
	Case & straps			2
568	1 bale red twill flannel	650	33	214 50
	CASE			
944	1 f'cy shirting flannel	56^{2}	75	25 42
	1 Bristol shirting flannel	61	47^{2}	28 97
561	1 Grafton " "	53^{1}	40	21 30
4128	1 Wilson " "	38^{1}	50	19 13
	Forward			2, 161 69
	Copy correct: THO'S T. BUCKLEY.			
	Forward			2, 161 96
10	5 pieces grey twill flannel	269^{2}	34	91 63
	2 Union	60^{1}	33	19 88
8583	1 Belknap do.	80	45	36
	1 Beaver Brook tweed	34	75	25 50
	1 Cardington jean	47	34	15 98
	Case & straps			1 50
	CASE 32.			
6062	1 super fancy cassi	30	1 65	49 50
	4 36^{3}–11102; 37–1178; 33^{3}–623; 36^{3}–1140	144	1 00	144 25
	2 XXX grey	49^{2}	80	39 60
	2 XX Union	50	65	32 50
	6 Terre Haute jean	289^{1}	16	46 28
	1 Beaver Brook tweed	35	75	26 25
251	1 f'cy list blue cloth	16^{1}	3 50	56 87
	3 Manson Woolen Co.	86^{1}	65	56 06
	Case & straps			2
	CASE 33.			
	15 Pra'rie Mills jean	604^{2}	55	332 47
	4 Manson Woolen Co	117	65	76 05
	Case & straps			1 50
	CASE 34.			
	2 blue & scarlet L. L. cloth	62^{1}	2 00	124 50
	1 Tiverton jean	44^{2}	30	13 35
	1 Oriental	36^{2}	27^{2}	13 68
	2 D. and T. cass.	46^{2}	70	32 55
	6 Cardington jeans	292^{1}	34	99 36
	1 Lincoln jean	48^{3}	26	12 08
	Case & straps			2

	CASE 35.				
	5 Manson satinett	133³	50		66 38
	5 black mixed	128³	50		64 25
	4 Lincoln jeans	198³	26		51 68
	2 Locust Valley	87	16		13 92
	Case & straps				2
	CASE 40.				
B.	5 indigo blue flannel	266²	38		102 60
	5 super	252³	48²		122 58
	5 Lincoln jeans	256	26		66 56
	Case & straps				2
					$4,022 25
	Copy correct: THO'S T. BUCKLEY.				

252

NEW YORK, *August* 27, 1869.

Tho. T. Buckley.
W'm C. Sheldon.
W'm R. Welling.
Dewitt C. Wheeler.
J. H. Boynton.
S. A. Frost.
J. H. Butts, jr.

M. . W. Hayes, Ottawa, Kansas, bought of Buckley, Sheldon & Co., Nos. 75 and 77 Leonard street, near Broadway.

Claims for damage or deficiency to be made by mail or otherwise, within ten days after receipt of the goods.

Terms, 4 mo's, note at bank. (Duplicate.)

	125	d'z. Coates' spool cotton, 95			118 75
	84	" Glasgow " " 47²			39 90
	148	" Hobart " " 12			17 76
	20	balls skein " 65			13
	1 2	g't gross hooks & eyes, 75			1 50
	2, 3 1	" " " " 1 00, 1 25			2 25
	3 1	" " silvered " 1 75			1 75
	40 10	lbs. standard linen, 2 20		22 00	
	40 6	" Crown " 1 25		7 50	
	8, 10, 12, 16 2	" white ball K. cotton, 95, 96, 97, 1 03		7 82	
	10, 12 2	" mixed " " " ea., 1 06, 1 07		4 26	
	D. 3 5	packs pins, 90, 70		8	
	4, 5 4	" " 65, 60		5	
	5, 7 1	" " 57, 54		1 11	
	8, 12 2	lbs. blue & white cotton, 1 95, 1 07		4 24	
				59 93	
		Less 10 %		5 99	
					53 94
	2, 24, 400 1	gross carpet binding, ea. 2 00, 2 75, 4 00			8 75
253	1	" tick 2 00			2
	4-4 4	" shoe laces, 3 72			1 50
	4-4 4	" braid " 52			2 08
	2¼ 1	" stay " 1 50			1 50
	2¼ 5	d'z. linen " 50			2 50
	3, 1 1	gross kerosene wicks, ea., 60, 1 25			1 85
	2 2	" " " " 75			1 50
	1 1	d'z. pieces plain corset clasps, 50			50
	2	" " cloth cover " " 63			1 26
	1	" " kid " " " 1 06			1 06
	513, 5223 1	M envelopes, ea., 1 90, 2 25			4 15
	5050, 5428 1	" " " 2 45, 2 75			5 20
	6430, 6440 1	" " " 3 00, 3 65			6 65
	59-5 1	" Melon Lind, " 3 10			3 10
		For'd			292 45
		Correct copy: THO'S T. BUCKLEY.			
		Forward			292 45
	3, 69-5 1	M white envelopes, ea., 2 85, 3 75			6 60
	6434-9, 6333-6 ½	" buff " 3 60, 7 00, 5 30			5 30
	2	re'ms Sphinx note paper, 1 25			2 50
	500 3	" Constitution " 2 00			6
	400 4	" " " 2 50			10
	66 1	" National " " 3 00			3
	400 4	" Holyoke octavo paper, 2 25			9
	600 3	" " packet " 2 75			8 25
	300 1	" Pemberton billet " 2 00			2
	800 2	" Constitution letter " 3 00			6
	1000 1	" " " 3 75			3 75
254	1200 3	" National " 5 50			16 50

(Written across the face in red ink:) Positively no goods taken back unless damaged.

	2	"	Waverly cap	2 75	5 50
	3	"	Croton " "	3 50	10 50
1200	1	"	Hadley " "	4 50	4 50
1200	3	"	Holyoke " "	5 50	16 50
	2	"	Constitution bill " "	4 75	9 50
1000	1	d'z	b'ks, blot'ers ,1 50		1 50
	6	day-books, 13 q'r., 10			1 30
F. crown	4	full round blank books.			
		Journal is 10 q'r's,			
		Ledger 10 "			
		Day-books 10 "			
		Cash " 7—37 " 55			20 35
	1	invoice file, 2 50			2 50
3550	2	doz. pass-books, ea. 25, 50			1 50
5a.	2	" " " 75			1 50
10	1	" long memorandums, 1 50			1 50
2°, 8°.	1	" pencil books, ea. 1 00, 1 50			2 50
487	1	gros' penholders, 75			75
	1	" maple " 1 50			1 50
1057	1	" cedar " 3 00			3
Job	4	" Medallion pens, 75			3
	4	" Union " 75			3
	6	" Falcon " 75			4 50
404, 303	2	" Gillott's " ea. 1 00, 1 50			5
	6	d'z. A. J. pencils 25			1 50
	3	' Guttknecht " 50			1 50
		Forward			474 45

Correct copy: THO'S T. BUCKLEY.

255		Forward			474 45
	2	d'z. gilt Mogul pencils, 62			1 24
	3	" Faber's " 75			2 25
	3	" bone tip " ea. 50, 62			3 36
	2	" carpenters' " 75			1 50
30	2½	" artists' rubber, 50			1 25
	6	" skirt braid, 80			4 80
	30	" Cyd alp. " 1 00			30
	1	" bundle suspenders, 2 00			2
14	1	" boys' " 2 25			2 25
35	2	" men's " 1 50			3
459, 17, 137, 250	1	" " " ea. 2 25, 3 75, 4 51, 6 00			16 50
	1½	4 g't gross wh't. agate buttons, 50			2
30, 30, 40, 50	1	" " " " 1 50, 1 75, 2 25, 2 75			8 25
	1½	2 " printed " " 2 00			4
20, 40	1	" rimmed " " 50, 75			1 25
2, 4	2	" shanked " " 25, 31			1 12
6	4	" " " " 35			1 40
8	5	" " " " 38			1 90
10	5	" " " " 50			2 50
11	2	" " " " 62²			1 25
7	3½	" f'cy col'd " " 1 00			3 50
74, 76	6	" pearl " " 15			90
78	4	" " " " 18			72
80	2	" " " " 31			62
81, 82	1	" " " " 37², 50			88
12, 14, 16	6	" stud b'ks " " 15, 18, 20			3 18
6, 8, 10, 11	1	" shanked " " 85, 1 00, 1 25, 1 50			4 60
256 1, 2, 3, 4	1	" pearl shirt " " 75, 85, 1 00, 1 25			3 85
5	4	" 1st qual. " " " 1 50			6
6	1	" stud b'k " " 2 00			2
228–30, 228–24	1	" white pearl " 1 75, 2 25			4
2150–36, 143–2²	1	" 1st qual. " " 2 75, 4 50			7 25
117–34	1	" smoked " 2 50			2 50
f. 24–2	1	" lasting " 65, 1 00			1 65
ff. 40	1	" S. B. " overcoat " 2 50			2 50
				85 1 10	
1	1	" rubber "			1 95
				26224 30430	
23840	10-12	gross rubber overcoat "		1 80	1 50
		Forward			613 87

Correct copy: THOMAS T. BUCKLEY.

		Forward			613 87
	5	gross gilt pant buttons, 25			1 25
27 ##	5	g't " p. m. brace "		1 00	5
	3	" " horn " "		1 65	4 95
	1	" " font. " "		1 60	1 60
9	4	" colored glass "		75	3
10	2	" bl'k " "		50	1
11	1½	" " " "		75	1 12
12	1½	" " " "		1 00	1 25
13	1 5-12	" " " "		1 25	1 77
13	½	" cut " "		1 25	42
14	½	" " " "		1 50	37
15, 16	1-6	" bl'k clesk. glass "		2 25, 4 00	1 04
70, 59	1	" red bone "		1 00	1
20	1½	" rep silk "		1 50	2 25
255a 21	½	" j't centre "		2 00	1 50

22	½	" h'lf ball velvet	"	2 00		1
23	½	" silk crochet	"	4 25		3 19
11	1	" buckles, 75				75
	2	d'z. p'r ivory sleeve buttons, 2 25				4 50
127	1	" " pearl " "		2 50		2 50
26	1	" " solid " "		3 00		3
	1	" jet crosses, 1 00				1
9	1	" bead chains, 6 00				6
	5	M B. S. & Co. needles, 2 00				10
	2	" Smith & Sons "	2 50			5
	3	gross knitting "	50			1 50
	1	d'z. ass'd tatting "	1 12			1 72
	3	" crochet "	37^2			1 13
	2	" packet "	50			1
	3	" " "	75			75
	3	" long bone "	1 00			3
	2	" watch keys, 25				50
	1	" f'cy steel " "	75			75
	1	" key rings, 25				25
2	1	M button " 1 25				1 25
	1	d'z cut steel tweezers, 1 00				1
	1	Ger. silvered thimbles, 2 25				2 25
	1	doz. steel " 50				50
		Forward				683 33

Correct copy: THOMAS T. BUCKLEY.

		Forward				683 33
	6	d'z. G. S. thimbles, 50				3
256c	10	b'dles hair pins, 31				3 10
	1	gross glass boxes " "	2 50			2 50
	10	boxes " "	37^2, 50			8 75
	1	d'z. " " "	1 00			1
25, 6	6	" horn back combs,	37^2, 1 00			8 25
129	2	" " " "	1 00			2
227, 30	1	" " " "	1 25, 1 50			2 75
700	1	" ivory "	2 00			2
7	1	" rubber "	3 50			3 50
60, 20, 50, 90, 3	1	" " long "	1 80, 1 90, 2 00, 2 10, 2 50			10 30
7 & 8 in.	6	" " dressing "	1 12, 1 25			14 22
6½, 7, 7½	4	" 1 in. teeth horn "	1 12, 1 25, 1 37^2			14 98
6½, 7½	4	" 4½ " " "	1 25, 1 50			11
68 in.	1	" crook-b'k " "	1 50, 2 00			3 50
	2	" horn pocket	75			1 50
10	2	" " fine	50			1
911, 21	2	" " "	50, 65			2 30
10 ss., 12 ss.	2	" " "	62, 70			2 64
	1	" extra "	3 00			3
8, 9, 11	1	" s. ivory "	1 00, 1 25, 1 75			4
10, 11	1	" ss. " "	1 75, 2 00			3 75
10, 11, 12	1	" s. rubber "	1 30, 1 40, 1 45			4 15
	2	pi'ces 1¼-in. bl'k Union belting, 1 50				3
	2	" 1½ " " all silk " 2 50				5
	16	" 1½ col'd " " " 2 75				44
	3½	C 20-y'd " 2 50				8 75
	3	d'z. 50 " machine " 80				2 40
	5	" 100 " " " 1 60				8 00
257	2	spool B. H. twist, 1 25				2 50
	2	lbs. B. L. & Co.'s silk, 10 oz., 9 00				18
	3	C emb'y " 2 25				6 75
		Forward				894 92

Copy correct: THOMAS T. BUCKLEY.

		Forward				894 92
	9	d'z. cotton nets, 31				2 79
	2	" h'vy " " ea. 50, 65				2 30
	3	" Duchesse invisible nets, 1 50				4 50
	4	" La Belle " " 2 00				8
	3	" h'vy cord " 2 75				8 25
2, 4	4	" stay binding, 30, 37^2				2 70
⅛ M	10	" " " 50				5
⅛	6	" " " 56				3 36
⅛	2	" " " 75				1 50
⅛, ⅛, ⅛, ⅛	2	" " " superfine, 75, 1 00, 1 25				9
1-16, ⅛, ⅛, ¼, 1½, 2½	2	" linen tape, 12^2, 15, 20, 28, 35, 45				3 11
7, 11, 15, 19, 25	4	" " bobbin, 10, 15, 20, 25, 35				4 20
73	⅛	gross alpacca braid, 4 00				1
	⅛	" ex. wide " " 9 00				2 25
65	⅛	" Milan " " 12 00				4
16, 20	1-6	" silk coat " 10 00, 12 00				3 66
163 1-5	⅛	" diagonal binding, 7 50				2 50
71, 366, 9	⅛	" figured coat, 9 00, 12 00				5 25
123	10	d'z. gimp trimming, 2 00				20
24	1½	" " " 2 00				3
61	2	" child's gaiters, 1 00				2
62	1½	" ladies' " 1 50				2 25
258 63	2	" " " 2 00				4
65, 111, 14	1	" silk " 4 50, 6 00, 9 00				19 50

100, 200, 300	1	gross	elastic cord, 2 00, 2 75, 3 25	8 00
300	½	"	silk " " 5 00	2 50
200	½	"	wh't'r " " 6 00	3
8	½	"	bl'k " braid, 4 50	2 25
10	2	doz.	" " " 50	1
166, 12	1	"	" " " 75, 60	1 35
70	1	piece narrow	garter web, 1 00	1
71	5	"	ass't'd heavy " " 1 25	6 25
72	3	"	fine " " 1 50	4 50
¼, ½	1		white elastic frill, 85, 90	1 75
¼ in.	3	"	lawn web, 1 25	3 75
½	1	"	pink elastic frill, 95	95
½	1	"	fine " " " 1 50	1 50
1775	1	"	f'cy plaid " " 1 50	1 50
			Forward	1,058 14

Correct copy: THOMAS T. BUCKLEY.

			Forward	1,058 14
½	4	"	p'c's f'cy plaid elastic frill, 1 00	2 00
	2	"	d'z. crochet braid, 31	62
	1	"	" " " ea. 25, 35, 60	1 20
	4	"	worsted serpentine, 37½	1 50
	2	"	star " 75	1 50
1	1	"	linen " 87½	88
0	1	"	worsted " 1 10	1 10
	17	"	" emb'o'y, 75	12 75
	2	"	tatting, 1 25	2 50
259 2, 3, 4, 5, 6, 7.	1	"	Paragon ruffle, 30, 40, 45, 50, 55, 60	2 86
2, 4, 6.	1	"	lace edge ", 50, 60, 75	1 85
757-6.	2	"	frill trim'ing, 37½	75
84	2	"	" " dbl. edge, 56	1 12
10	1	"	" " 75	75
75 11-8	1	"	lace edge " ea. 50, 65	1 15
	2	"	tape " 50	1
90	2	"	Masonville " 62	1 24
92	4	"	" " 75	3
93	2	"	cold " " 1 00	2
½, ¾, 1	3	"	Sundingham frilling, ea. 80, 1 10, 1 25	9 45
¾	1	"	Nightingale " 1 10	1 10
1½	2	"	Broadway " 1 60	3 20
	12	b'dles	long bone, ea. 75, 1 00	21
8	1	doz.	morrocco wallets, 1 50	1 50
895, 3004, 1729	½	"	" " " ea. 4 50, 6 00, 9 00	9 75
303	½	"	spring " 6 00	3
148	1	"	sheep " 2 00	2
3	1	"	whisk brooms, 3 50	3 50
420	½	"	sheep wallets, 4 50	2 25
4, 6, 8.	1	"	lather brushes, ea. 1 00, 1 50, 2 00	4 50
1912, 1274, 4879	1	"	tooth " " 50, 1 50, 1 75	3 75
573, 513, 514	1	"	" " " 2 00, 2 25	4 25
	1	"	nail " 2 75	2 75
20	½	"	cloth " 4 75	2 37
	10-12	"	hat " 3 50	2 92
5179	1	"	hair " 2 25, 4 25	6 50
1001, 66, 1003	1 1-6	"	asst'd " 3 50	3 50
260 85	1	"	shoe " 3 50	3 50
			Forward	1,193 89

Correct copy: THOMAS T. BUCKLEY.

			Forward	1,193 89
2, 4	3	doz.	Mason's blacking, ea. 50, 85	4 05
345	1	"	rose oil, 2 00	2
	2	"	lather boxes, 1 50	3
344	1	"	bear's oil, 2 00	2
361, 360	1	"	bay rum " ea, 2 00, 3 00	5
408	1	"	pomade, 150	1 50
	10	bars	barber's bar-soap, 32½	2 25
	1	doz.	Persian " 60	60
	3	"	almond " 65	1 95
	2	"	Magnolia " 75	1 50
3 doz.	1	box	CCC glycerine " 1 25	1 25
6 "	1	"	Indian " 1 50	1 50
4 "	1	"	Castile " 2 75	2 75
3 "	1	"	Italian " 3 25	3 25
Wood box.	3	doz.	medium honey " 1 37½	4 13
2	½	gross	honey & glycerin " 10 00	5
2	½	"	brown windsor " 12 00	3
2	½	"	aromaticvegetable " 20 00	5
3f	2	doz.	continental " 1 30	2 60
12	1	"	transparent " 1 00	1
	2	"	indexical honey " 1 37½	2 75
	1	"	pumice " 1 00	1
	11-12	"	red ink, 2 00	1 83
	6	"	David & stands, 75	4 50
261	1	"	" " 4oz. 1 25	1 25
In case.	1	"	Arnold fluid, q'ts, 9 75	9 75

	2 boxes damen, 60	1 20
	Case & straps, 5 50	5 50
	(Cases No. 53, 54, 55.)	
To fill	3 r'ms paper, 75	2 25
		1,278 25

Correct copy: THOMAS T. BUCKLEY.

NEW YORK, *Feb'y* 10, 1870.

Mr. William Hayes to Buckley, Sheldon & Co., 75 and 77 Leonard street.

1869.

Aug.	27.	To m'd'se			2,156 91
"	27.	"	"		1,454 74
"	27.	"	"		202 80
"	27.	"	"		16 42
"	27.	"	"		66 39
					3,897 26

NEW YORK, *Aug.* 27, 1869.

Tho. T. Buckley.
W'm C. Sheldon.
W'm R. Welling.
Dewitt C. Wheeler.
J. H. Boynton.
S. A. Frost.
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Claims for damage or deficiency to be made by mail or otherwise within ten days after receipt of the goods. Terms, cash. Note at bank. (Duplicate.)

262 CASE 4 10.

530	1	dz.	neglegee shirts, 15 00		15
1884	½	"	" " 15 00		7 50
879	1	"	" " 19 00		19
	1	"	grey flannel, 15 00		15
	1	"	red " 15 00		15
519	1	"	tweed cass, 15 00		15
W. & H.	2	"	Duvin shirts, 10 00		20
	4	"	hickory " 7 50		30
Beh.	2	"	stripe ½ hose, 1 75		3 50
	4	"	blue & bro. mixed ½, 2 00		8
101 B. B.	2	"	" " 2 25		4 50
750	2	"	bro. toe & heal, 2 50		5 "
Beh.	1	"	l'ds mixed hose, 2 50		2 50
170	1	"	wh't. cot. " 2 00		2 "
175	1	"	" " " 2 50		2 50
Beh.	2	"	improved d'd 1 50		3
"	2	"	com. rih'd, 1 50		3
	4	"	fine " 1 60		6 40
136	1	"	infants' hose, 1 60		1 60
269	2	"	" sacks, 1 75		3 50
84 K.	3	"	misses' wh't. cot. hose, 2 25		6 75
197 M.	2	"	" fancy, 2 00		4
6108	1	"	" l'd's' Lisle gloves, 2 50		2 50
1510	3	"	" " cot. " 2 00		6
408	3	"	" mixed " 2 00		6
1046	1	"	Berlin " 3 50		3 50
4305	1	"	gauntlets, 3 00		3
263 182	1	"	red ink	3 75	3 75
	1	"	l'ds' f'cy stripe ties	7 00	7
233	2	"	ribbon "	1 50	3
59	1¼	"	black "	2 50	3 12
750	1	"	" "	2 75	2 75
			Forward		233 37

Correct copy: THO'S T. BUCKLEY.

			Forward		233 27
800	1	doz.	col'd tube ties		3
	10-12	"	bl'k waterfall "	1 50	1 25
932	1	"	fancy " "		2
872 G	1	"	" bows		2 25
943 G	1	"	" "		2 25
	1¼	"	black "	3 00	3 75
	1	C	g'ts paper. rev. cuffs	3 00	3
	½	gross	l'd's f'cy paper coll's	2 50	1 66

74	1 dz.	H. L. h'dkfs			3 50		3 50
92	2 "	g't's f'cy bow	do.		4 75		9 50
211	1 "	l'ds' L. C.	"		1 20		1 20
135	1 "	" "	"		1 85		1 85
222	1 "	" "	"		1 35		1 35
282	2 "	" "	"		3 50		7
292	2 "	" "	"		3 75		7 50
72	1 "	" "	"				5
213	1 Irish linen			19	50		9 50
10 2-21-4	1 doz. ea. linen bosoms			250	20c.		4 50
	1⅛ " fancy	"			2 00		3 33
125	1 pc. sarsnet cambric			20	37½		7 50
264 94	1 " plaid	"		20	37½		7 50
94	1 " "	"		20	37½		7 50
	1 C l'd's tuck, P. cuffs				4 00		4
280	1 gross l'd's P. collars				1 75		1 75
	1 " Eugene	"			1 50		1 50
2 cord	1 " "	"			1 25		1 25
N. Kn.	1 " "	"			85		85
	5-12 dz. 50 sp'g skirts				12 00		5
	1 dz. 30 3-in. tape	"			9 50		7 50
	1 " " "	"			7 50		7 50
	1 " 25 1½ 6 tape	"			6 00		6
	Case & straps						2 25

CASE 12.

	1 dz.	Excel. shirts			21 00		21
O 11-12	"	super wh't corsets			18 00		16 50
B 1	"	col'd			11 00		11
1	"	30-spring Dutchess skirts			13 50		13 50
1	"	25 "	"		11 00		11
	Forward						

Correct copy: THO'S T. BUCKLEY.

	Forward						
	1 loom. damask, 2 cloth			36	70		25 20
3	1¼ dz.	stamped aprons			2 50		4 37
5	¼ "	" "			3 25		82
F 5	2 "	" "			3 00		6
F 3	½ "	" "			3 50		1 25
	2 M campaign collars				16 00		32
	1 Jacquard bro. diaper			42²	35		14 87
265	1 moss drill			41²	15²		6 42
	1 Amoskeag Canton			40²	30		12 15
	2 paper cambrics			92¹	13		11 99
	3 Juniata bed			93	16		14 88
	Case & straps						2 25

CASE 13.

	2 Amoskeag cambrics			115	11		12 65
	6 lawns			204¹	27²		56 17
	6 denims			210	21		44 10
	6 anchor shirting p'ts			280¹	13²		37 83
	2 Allen	"		96¹	13²		12 99
	5 Richmond	"		196²	13²		26 53
	4 Wamgun	"		151¹	12²		18 90
	10 Lanen	"		434²	13²		58 66
	12 American	"		545¹	13²		73 47
	6 merk D	"		236	13²		31 86
	2 Ballou bleach			93	16		14 88
	2 Glenbrook	"		84	12²		10 50
	1 Juniata bed			39¹	16		6 28
	Case & straps						2 25

CASE 14.

	4 Mason bleach			180²	20		36 10
	5 Albion W.	"		257	15		38 55
	6 Langdon 4 6-inchdo			263²	22²		59 28
	6 Pearl River	"		281²	10		28 15
	10 Franklin C. jeans			433	15		64 95
	2 Hallowell C.	"		93	16		14 88
	3 York cotton			130⁸	25		32 70
266	3 Oakdale			106	40		42 40
	4 gingham			161²	16²		26 64
	Case & straps						2 25
	Forward						1,327 03

Correct copy: THO'S T. BUCKLEY.

	Forward						1,327 03

CASE 15.

	2 Woonee gingham			82¹	16²		13 57
	1 farmers' & mechanics' cass			36	42²		15 30

14	1 bl'k " satin	47²	95		45 45
55	1 " " "	47¹	1 10		51 97
104	1 bl'k alpacca	47	50		23 50
48-4	1 col'd "	48²	50		24 37
512	1 crown " (colored)	42	45		18 90
	1 brown veil barege, $\frac{a}{13\frac{1}{2}}$	17$\frac{1}{10}$		69³	10 75
	1 " " " " $\frac{m}{14}$	15½		69²	9 47
1455	1 Granite cassimere	10³	1 15		12 17
	3 bl'k wadding			40	1 20
	1 fancy cassimere	5³	1 50		8 25
8078	1 glove " 5 for	4³	1 70		8 07
3821	1 Ballou "	20³	1 50		31 12
	1 white netting			95	95
	3 pink "		1 05		3 15
1508	1 white flannel	25³		45	11 48
3315	1 set plain "	27		37²	10 13
48	1 " twill	58		45	26 10
7	1 apron check	68¹		17²	12 07
9	1 " "	64		25	16 07
267	10 crash stark an., 25 ea	250		22	56 25
	7 4 K. crash "	175		12²	21 87
	2 dz. black wadding			40	80
	5 " white			55	2 75
	Case & straps				2 25

In case ♯ 11 (with notions:)

	5 Juniata brown	199³		16	31 96
	Cases & straps				2 25

♯ 17.

	4 Northampton gingham	145³		16²	24 04
	2 Pemberton cassimeres	79		49	35 55
	9 Stevens' P. crash, 25 ea	225		16	36
	1 4 K. "	25		12²	3 13
	2 blue drill	85		25	21 25
	2 Juniata sheeting	81¹		16	13
	Cases & straps				1 88
	Forward				1,934 05

Correct copy: THO'S T. BUCKLEY.

Forward 1,934 05

BALE ♯ 18.

	1 Juniata brown	41¹		16	6 60
	3 Will. a a "	138		15³	21 39
	6 Pittston a "	240²		13	31 27
	2 Great Falls E "	72		16²	11 88
	3 Liveoak C "	124³		13	16 22
	3 work denims	166³		25	41 70
268	♯ 19.				
	3 Uncas tick	141		25	35 25
	2 imperial aca, tick	102²		20	20 50
	1 Waner brown demin	60¹		21	12 65
	2 Amer. stripes	81³		16³	13 48
	1 Liveoak sheeting	77¹		13	10 04
	Cases & straps				1 88
					2,156 91

Correct copy: THOMAS T. BUCKLEY.

Tho. T. Buckley.
W'm C. Sheldon.
W'm R. Welling,
DeWitt C. Wheeler.
J. H. Boynton.
S. A. Frost.
J. H. Butts, jr.

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	♯ 21.			
	5 French lawns $\frac{m}{47}$	141	27²	38 77
	1 " "	51	27²	14 02
	2 blue Paris mohair	25	26	6 25
	1 " " "	14	35	4 90

	2 fancy check	26	42[2]	11 05
	1 printed flannel	27[1]	37[2]	10 21
	3 brown lawns	60	22[2]	13 50
	4 serge de Paris	144	25	36
	3 debrege	164[2]	25	41 13
	2 brown mixtures	107[3]	22[2]	24 23
269	2 m'g mohairs	77[2]	40	31
	12 Gibets skirts	.....	2 25	27
	2 Isabella "	.....	2 00	4
	12 Belle "	.....	2 00	24
	1 Cardington jean	48	35	16 20
	2 merk chintz	78[2]	16	12 56
	2 alpacca lustre	84[1]	27[2]	23 17
	2 spot	72[1]	21[2]	19 87
	2 Garner & Co	77[2]	13	10 46
	1 Sprague blue print	29[3]	14[2]	4 31
2025	1 do. linen pants	.....	21 00	21
2189	1 "	.....	12 00	12
21	2 jaconet cambric	40	20	8
41	1 "	20	25	5
51	1 "	20	29	5 80
	Case & straps	.....	.....	2
	‡2.			
5 D.	2 doz wh't dress shirts	.....	25 00	50
S. & D.	1 5-12 (job)	.....	15 00	21 35
187	2 doz l'ds L. C., S. & d'k'fs	.....	4 75	9 50
3	5 " L. H. T	.....	1 50	7 50
	Forward	.....	.....	514 78
	Correct copy: THO'S T. BUCKLEY.			
	Forward	.....	.....	514 78
100	13 p'c's nebba, (job)	.....	50	6 50
150	28 " " "	.....	70	19 60
200	14 " " "	.....	1 00	14
270 250	25 " " "	.....	2 50	62 50
	10-12 d'z kid gloves	.....	4 50	3 75
	½ " mitt. "	.....	1 50	50
143	1½ " gloves	.....	1 50	2
896	1 10-12" wh't, (as are)	.....	1 50	2 75
	3 " col. & cot. & silk do	.....	50	1 50
1½	12 trimming ribbon	.....	60	7 20
	1 d'z bro.-drill overpants	.....	9 00	9
	1 " duck	.....	12 00	12
2158	1 " cottonade pants	.....	18 00	18
2071	1 " " "	.....	13 50	13 50
	1 " tweed cass. shirts	.....	15 00	15
2210	12 linen coats	.....	1 50	18
2016	12	.....	2 25	27
	1 linen drill sack	.....	2 50	2 50
2192	7-12 " socks	.....	1 75	1 03
	5 " calico shirts	.....	8 00	40
	1 d'z square shawls	.....	8 00	8
	3 black Thibet "	.....	3 50	10 50
52	4 " " "	.....	2 75	11
180	4 broche bord	.....	2 75	11
	1 striped broche, (as is)	.....	2 25	2 25
	4 white Shetland	.....	2 50	10
	9 magenta crape	.....	2 75	24 75
67	1 drab Thibet shawls	.....	.....	2 50
56	11 " " "	.....	3 00	33
	Case & straps	.....	.....	2 25
	23.			
	15 dark-gray shirts	.....	8 50	127 50
271	15 light " "	.....	7 50	112 50
	20 diagonal rich do	.....	7 00	140
	Case & straps	.....	.....	2 25
	‡24.			
	15 super pla. bl'k shirts	.....	9 00	135
	14¼ lbs. twine	.....	47[2]	6 88
	3 d'z hickory shirts	.....	7 50	22 50
	Case & straps	.....	.....	1 75
				1,454 74

Correct copy: THO'S T. BUCKLEY.

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		20	d'z O. N. Y. whit' & colored cotton		95	19
		8	" bleach. Glasgow "		45	3 60
	40, 50	1	lb. Bartlett's linen thread	150	165	3 15
		20	d'z 5-y'd skirt braid		80	16
	60	1	lb. 200 " linen thread		145	145
	4, 3. 2	1	pack pins, ea. 62, 67, 85			2 14
	137	1	d'z suspenders		2 50	2 50
	257	1	" "		3 75	3 75
272	213, 21	¼	" "		4 75	3 56
		1	" heavy cord wall nets		50	50
		1	" " " s'ge cotton nets		75	75
		2	" fine waterfall "		25	50
		2	" large " "		37½	75
		1	" heavy silk cord "		2 50	2 50
		1	" s'ge " " "		3 25	3 25
	4	2	" black stay-binding		37½	75
	5-16 ¼	2	" " " "	31	50	1 62
	1st qual.	2	spools button-hole twist		1 25	2 50
		2	doz 50-y'd machine "		85	1 70
		1	piece Union belting		1 50	1 50
		2	" all-silk "		2 50	5
	10 y'd	2	" colored cotton trimming		50	1
	2715, 10 "	4	" " " "		25	1
	10 "	1	" " " "		85	85
	10 "	4	" white Marseilles "		75	3
	10 "	1	" double-edge white frill trimming ea.	38	50	88
		4	gross 4-4 braid laces		50	2
		2	g't " white agate buttons		50	1
		1	" colored " "		3 00	3
	20	3	" s'ge " " "		50	1 50
	8	1½	" " " " shanked buttons		40	60
		5	" colored-glass dress "		1 00	5
			Forward			96 30

Correct copy: THO'S T. BUCKLEY.

			Forward			96 30
		2½	gross rimmed dress buttons		1 00	2 67
273		1	" bl'k glass " " 50, 75, 1 00			2 25
		¼	g't " white bone brace "		2 25	1 12
		½	" " " front "		2 00	50
		1	" " black brace "		1 75	1 75
		1	" " " front "		1 65	1 65
	10	2	" brown porcelain "		50	1
		1	" " & bl'k ivory "		1 00	1
		¼	" ivory "		1 50	75
		2	" pearl shirt "		1 00	2
		3	doz horn dress'g combs		90	2 70
		1	" buffalo back "		2 00	2
		1	" " " "		1 00	1
	3	1	" rubber long "		2 50	2 50
	10	1	" " fine "		1 40	1 40
	12	1	" " " "		1 55	1 55
		1	" horn plantation "		75	75
	311²	¼	" h'vy" fine "		3 00	1 50
	200	¼	gross black elastic cord		2 25	1 69
	500	¼	" " " "		2 25	1 12
	2787	¼	" " " "		4 00	3
		1	doz p'c's gilt sleeve buttons		2 25	2 25
		1	" " ass't'd " "		1 00	1
		1	" " pearl " "		2 00	2
	403	¼	" sets pin & eardrops		9 00	2 25
		¼	" steel centre broches		2 00	1
		¼	" carved " "		1 50	75
		3½	M needles		2 00	6 50
		1	box darners		60	60
274	385, 275	¼	doz pocket knives	3 00	4 50	3 75
	140	¼	" " " "		6 00	3
		¼	" 6½ & 7½-in cast-steel sheeres	5 00	6 50	5 75
		¼	" " " scissors		4 25	1 06
	1030-6	¼	" Shinn S		3 00	1 50
		2	" linen forns		2 00	4
		1	" boxes Kirby m'g pins		87	87
		¼	gross belt "		25	12
		1	bundle hair "		12	12
						166 72

Correct copy: THO'S T. BUCKLEY.

				166 72
	9 bundles h'vy hair pins		35	3 15
	7-12 gross wood pencils		2 75	1 60
	5-12 " octagon "		4 50	1 88
Job	1 doz scissors on card as one		1 50	1 50
727	2 gross Falcon pens		75	1 50
487	1 " penholders		75	75
	2 doz bath soap		1 50	3
	1 box Italian soap		3 25	3 25
	3 doz Moore's ink		55	1 65
	3 b'dls heavy stay bine		75	2 25
	2 d'z " long "		1 00	2
	4 14-in silk sun umbrellas		1 20	4 80
	4 16 " " " "		1 50	6 00
25	palm-leaf fans		5	1 25
25	small satin P. L. "		6	1 50
	Notions in case No. 11			$202 80

275 (Correct copy:) THOMAS T. BUCKLEY.

Tho. T. Buckley.
W'm C. Sheldon.
W'm R. Welling.
Dewitt C. Wheeler.
J. H. Boynton.
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10, 12, 14	2 bls. blue ball knit cotton	90, 91, 94	5 50	5 50
12, 14, 16	2 " wh't " "	81, 84, 87	5 04	5 04
3	2 g'r gross 1st qual. hooks & eyes		1 75	5 25
3	½ " " black " "		1 25	63
				$16 42

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Terms, cash. Note at bank. (Duplicate.)

	10 dz. Clarke's cotton		95	9 50
2	1 M button rings		1 25	1 25
276	1 box tailors' crayons		50	50
6	½ gross jewsharp		3 25	1 63
	½ d'z. cross sets, pin and earings		7 50	1 87
	½ " hoop " " "		12 00	3
56	1 set im. shell " "		1 00	1
27	1 " sleeve buttons "		3 00	3
	6 fancy bone stick fans		2 00	12
	3 doz. colored serpentine braid		37½	1 13
	1 " kid cover corset clasps		1 06	1 06
2715	3 piece apron trimming		25	75
1	3 " colored cotton "		50	1 50
2	2 " wide " "		1 00	2
3	1 " white " "		50	50
	3 ass't'd " "		75	2 25
140-12, 143-6	2 dz. cotton fringe, 1 p'ce ea	85	1 25	4 20
	1 piece skirt trimming		1 00	1
2	1 " lar' edge ruffle		40	40
⅛ a	1 " Sandingham frilling		90	90
1½ in	3 " Broadway "		1 40	4 20
140	7 doz. gimp fringe, 4 p'c's		1 25	8 75
23	2 " heavy 1 "		2 00	4
	Notions case 22			66 39

Correct copy: THOMAS T. BUCKLEY.

(Written across the face in red ink:) No goods taken back unless damaged.

279 NEW YORK, *Feb'y 10th*, 1870.

Mr. William Hayes, Ottawa, Kansas, to Buckley, Sheldon & Co., 75 & 77 *Leonard street.*

1869.			
Aug. 21.	To m'd'se, cash		10,310 09
" 24.	" " 4 mo's		4,022 25
" 26.	" " " "		4,083 26
" 27.	" " " "		1,278 25
" 29.	" interest		44 14
			19,737 99

Q. After these goods were attached, did Mr. Hayes apply to your firm to duplicate the goods?

A. After making the purchase of these goods, Mr. Hayes went west and in the course of a week or so thereafter he came back; he got a telegram requesting him to return, and saying that his goods were attached. He wanted us to sign a bond to replevin those goods. We declined to do it. He then asked us if we would duplicate that order for goods—$3,800 00 was all that he knew had been attached then. He wanted us to duplicate that order or fit him out with a stock of goods, so that he could go on with that Indian fur and robe trade, stating to us that it was very important that he *had* these goods there as soon as he could get them there. We told him that we must decline; that the amount was very large, and we could not sell him any more.

Q. What effect upon a merchant starting, as he was, in business
280 would the attachment of these goods have upon his credit?

A. I don't know what effect it would have upon other people, but the effect it had upon us was that we saw there was going to be a long litigation; that this amount of money was going to be tied up, and we would not have sold him the goods had we known there was going to be this litigation, as we would necessarily have to be kept out of our money for some time, and the effect upon us would be to decline to sell him any more goods.

Q. From your experience as a merchant, what would be the effect on the mercantile community generally?

A. I should think the same. My impression is that it would destroy his credit in the market here entirely, as people never stop to enquire whether a man is right or wrong.

Cross-examined:

Q. (By Mr. Devine.) Did you take down, in writing, Mr. Buckley, the statement which Mr. Hayes made to you?

A. No.

Q. Did Hayes made the statement to you in his own handwriting?

A. No, he made the statement, and Mr. Wheeler, my partner, wrote it down in my presence.

Q. This paper, which you produce, is the statement that was made by Mr. Hayes in your presence and taken down by your partner, Mr. Wheeler?

A. Yes, sir; that is Mr. Wheeler's handwriting.

Q. Is it correctly taken down, according to your recollection?

A. Yes, sir.

The following is a copy of the document referred to:

281 William Hayes, Ottawa, Kansas.

(Interlined:) Send either money or goods.

Cash loaned—all coming in before Dec. 1st	$10,000
Property in Kansas City, free & clear (Northrup & Chick)	10,000
Steamboat stock, represents 25,000; paid for it	12,267
(Interlined:) Eldridge notes; if don't get money, to sent to us.	
M'tg's on property in Lawrence, Kansas	3,800
Property near Rochester, N. Y., free & clear	(3,800)
Bills receivable, goods, &c., in Imp. & Traders' B'k	2,800
Other property he didn't count.	
	42,267

Considers himself worth sum 50,000$.

Wants to buy dry goods	20,000
Groceries	5 to 10,000
Other goods	10,000
	$40,000

Wants to pay $5,000 on his dry-goods; balance on 4 months' credit.
AUGUST 20, 1869.

(Written across the face:) E.

Witness states: The interlineations on this paper are in my handwriting.

Q. (By Mr. Devine.) To whom did Hayes say that he had loaned the $10,000 cash that he has mentioned in this statement?

A. He said a part of it was to some connection of his, a neighbour near Rochester, where his home originally was, and the other part was in Ohio, I think, where he resided. He is a native of Rochester
282 in this State, and owns a piece of property there which is not put down on this, for the very reason he says it was an old piece of homestead property; had been in the family for a long time, and he did not consider it as a part of his assets, because he never intended to part with it. His father lived on it, I think he said.

Q. Did he mention any names of the persons at or near Rochester who owed him this loaned money?

A. He did, but I didn't take them down, and I could not. I have looked over the books to see what they were. In regard to it he mentioned several names. I think a brother or brother-in-law was one of the mortgage's, and I think a cousin was another. He said it was all abundantly secured, and could and would be paid.

Q. That it was secured by mortgage?

A. Yes, sir.

Q. On what?

A. On real estate.

Q. Have you now no recollection at all as to any names of the parties at or near Rochester?

A. No; I have not. I have recollection of his saying to me, when I said, "Why don't you send that money to us you agreed to;" he said his expenses in this matter had been so much that he had been compelled to use money that he had collected.

Q. That is not material. I only want to get the names. Did he mention the names of any of the parties in Ohio who owed him money?

283 A. He did, but I didn't take them down; I hear so many names that I didn't charge my memory with it.

Q. One of the parties at Rochester, you think, was a brother-in-law, and the other was what?

A. A cousin, I think he said.

Q. His property, at or near Rochester, is noted in this statement, is it not?

A. No, sir.

Q. There is property there you see, but it has a circle round the figures?

A. He said that property there at Rochester he felt he never could part with it; that is what I mean.

Q. But nevertheless it is in his statement?

A. Yes, it is in his statement.

Q. Then you correct your previous statement to the effect that that property was not mentioned in this statement?

A. I do.

Q. It is mentioned there.

A. Yes; you asked me a moment ago if it was in this, and I said "No," but by that circle being round it, I meant to say that it was excluded—didn't look upon it as an available asset; something that he wanted to convert into money.

Q. Did he state any of the circumstances under which he had loaned this cash to these parties in or near Rochester?

284 A. Mr. Hayes hadn't expected when he came home from New Orleans to have embarked in business. The matter had been talked over with a Mr. DeWolf and himself to enter into business together; Mr. DeWolf was to have contributed some $20,000 00, and he was to have contributed a like amount, but owing to the troubles of Perry Fuller in New Orleans—DeWolf was there as deputy collector or something of that kind—he left the country and went to Canada, which broke up his original intention of entering into business with him. This money of his had been loaned prior to this date, as I understood him, some little while—something in the neighborhood of a year.

Q. Was that all he stated on that subject that you now recollect?

A. In regard to Mr. DeWolf going with him?

Q. Yes, or in regard to the circumstances under which this money was loaned to those people in or near Rochester?

A. And in Ohio?

Q. Yes.

A. Yes, that is about everything that he stated in regard to it. His idea was to make a statement showing that he had the means to go into business with, and that he expected to have gone in with Mr. DeWolf, and that failing he had not notified those parties there in regard to the money; thought that they would be prepared to pay it to him, or if not, that they would give him notes payable at bank so that he could use it as cash.

285 Q. Did he mention the name of Perry Fuller, or any relative of Perry Fuller's, in connection with that $10,000 00?

A. He did not, sir.

Q. Now, as to this property in Kansas City, what did he say about that, as to the circumstances under which he bought that?

A. The property in Kansas City was in the name of E. Fuller, Mr. Fuller's son; and Mr. Fuller's son in this settlement and by a written paper he had, was to have transferred that property in Kansas City to him, William Hayes.

Q. Did he show you that paper?
A. Yes, sir; he showed us that paper.
Q. Have you any copy of it?
A. No, sir, I have none; but he said he didn't know but what he had sold that property, his son may have sold it, or Mr. Elder may have sold it.
Q. That is, Perry Fuller's son may have sold it?
A. Yes, sir; may have sold it. This Mr. Elder is the father-in-law of Mr. Fuller's son, and is a banker there out at Ottawa.
Q. You are now looking at the property in Lawrence. My question has reference to the property in Kansas City?
A. Oh, yes, I see. The title of that property in Kansas City was in the name of E. Fuller, and E. Fuller was to trasfer it to him.
Q. E. Fuller, I understand you, was the son of Mr. Fuller?
286 A. Yes, sir; he had a paper to that effect.
Q. Which he exhibited to you?
A. Yes, sir; I didn't take a copy of it.
Q. What connection had Northrop and Chick with that property?
A. They originally owned that property & sold it to Perry Fuller.
Q. And Perry Fuller conveyed it to his son?
A. Sold it to Perry Fuller & Company.
Q. And how did it get into the name of E. Fuller?
A. Well, I don't know; that was not explained to me. E. Fuller is the son and partner of Perry Fuller, & I don't know why it was transferred by Northrop & Chick to E. Fuller.
Q. As I understand you, he stated to you that Northrop and Chick had conveyed this property in Kansas City to Perry Fuller?
A. No; Northrop and Chick conveyed it directly to E. Fuller, so they told me.
Q. Then what connection had Perry Fuller with it?
A. Well, E. Fuller is a son of Perry Fuller, and E. Fuller had an interest in the firm of Perry Fuller & Company, as a partner, or had an interest; whether his name was in it as partner or not, I don't know, but at one time he had an interest & was here in New York, and transacted the business with Mr. Hayes, and with Mr. , the other man; I don't recollect his name.
287 Q. And this is what Hayes told you?
A. Yes; and Northrop or Chick, one of them, told me that they conveyed that property to E. Fuller.
Q. And E. Fuller was to convey this to Hayes?
A. Yes, sir. I went there to see if they had a copy of the old deeds, to see whether the statement of Hays was correct, and that is what they told me in regard to it.
Q. Do you recollect what consideration, if any, was stated in that agreement to convey this property to Hayes?
A. No, sir.
Q. Do you remember whether any consideration was stated in it?
A. Yes, there was; and I don't know but what it came up under the settlement papers in some way. I think there was a paper drawn up in this settlement with Mr. Hayes and Fuller and Macdonald, in which this settlement—that was to be turned over to them. I imagine it was put in E. Fuller's name as a convenience, rather than mention the names of the different parties.
Q. What settlement paper do you refer to?
A. There was a settlement mad' with Mr. Hayes and Fuller and Macdonald along in April, 1869, in which this property was turned over to

him. It was turned over in this way: They guaranteed Mr. Hayes this property should be worth certain sums they put on it, as I understand, and if it didn't bring such a sum, they were to make good the difference.

I think that is the way he stated it to me, and the reason he gives
288 these figures there in regard to the Kansas property and the steamboat stock.

Q. And it was turned over to him (Hayes) at these prices?

A. Yes, sir; as so much cash; but they agreed to make up any deficiency.

Q. You mentioned a few moments ago that it was to be security to him.

A. Security for what?

Q. For this indebtedness of Fuller & Company to Hayes.

. You may call it security. I should call it payment. If a man says, There is a house I will sell you for $10,000 00; I owe you $10,000 00, and I give you a written obligation that the house will bring $10,000 00; I take the house bona fide, but with the expectatation that it shall bring $10,000 00.

Q. It was really a mortgage, then?

A. No; it was a bona-fide transfer.

Q. Did he state to you how this indebtedness of Perry Fuller, or Fuller & Macdonald, to him, originated—what it was for?

A. He said it was for money he had loaned them for services he had rendered them, and for profits of contracts which he had been interested in. For instance, they take a certain contract, on which they would give you one-tenth or one-twentieth, and so on. That was his part of the profit.

Q. What did he state to you as to how he became possessed of this steamboat stock mentioned in this statement?

289 A. The par value of the steamboat stock was there represented as $25,000 00. The steamboat stock was represented to him of the value of twelve thousand and odd dollars, with an agreement on the part of Mr. Macdonald that he would make it good to him for that amount. If the property didn't sell, (the steamboat stock,) *sell* for enough to nett that twelve thousand and odd dollars, he would make *make* it good to him in money, or would turn over to him a certain amount of Kansas lands that he held. There was a written agreement with Macdonald, but was not signed by Macdonald. It was noted, I think, at the bottom that, being a Senator of the United States, he didn't like to sign a document of that kind, but it was stated in the presence of witnesses, so that it would be a good lien against him.

(See next page.)

Q. In what company was that steamboat stock?

A. It was in the Memphis & White River Steamboat Co., I think.

Q. What interest, if any, had Perry Fuller in that steamboat stock?

A. As I understood, from Mr. Hayes, the steamboat stock belonged to the firm of Perry Fuller & Co., of which Macdonald was the company. One firm was Perry Fuller & Co. & the other was McDonald & Fuller, embracing Macdonald in both firms.

Q. And the steamboat stock you understood belonged to the firm of Perry Fuller & Co.?

290 A. Yes, or Macdonald & Fuller. It was in the name of A. Macdonald.

Q. And the firm had paid on it $12,267, the amount stated.

A. That was the cash value at which they considered it.

Q. Although the nominal value was $25,000?

A. Yes; $25,000.

Q. You say there was a separate paper, not signed, relating to the transfer of that stock to Hayes?

A. So Mr. Hayes informed me.

Q. He didn't show you the papers?

A. He didn't show me the paper. He showed me the papers transferring the stock to him, signed regularly.

Q. Did he tell you anything as to where the office of this company was located?

A. Yes.

Q. At what place was it located?

A. Memphis, Tennessee.

Q. And for what was that stock turned over to him?

A. As this indebtedness of the firm of Fuller.

Q. As security?

A. Well, it was turned over to him in payment bona fide—turned over to him as so much payment, with the guarantee, as I have stated, that they would make good any deficiency.

Q. How much, in all, did he claim as due to him from the firm of Perry Fuller & Co. or Macdonald & Fuller?

A. That I can't say. I don't know as he stated to me. I would say that these four items came from Fuller & M'cdonald, but whether
291 they owed him more than that, I don't know.

Q. That is the four items of property in Kansas City, $10,000; steamboat stock, $12,267; mortgage on property in Lawrence, Kansas, 3,800; bills receivable, notes, &c., in Importers & Traders' Bank, 2,800?

A. Yes; those came from Fuller & Macdonald, but whether he owed them as much or more than that, or whether they owed him as much or more than that, I don't know, because I don't think he ever stated to me the amount of Fuller's indebtedness to him—the full amount.

Q. What did he say to you on the subject of the mortgages on the property in Lawrence, Kansas?

A. That is a mortgage of $3,800. He said that he didn't know but Elder had sold that property, and, if so, he would get Elder notes; if he didn't get the notes, why he would get the money and send it to us.

Q. Who was Elder?

A. He is a banker at Ottawa.

Q. Was he in any way connected with Perry Fuller or Perry Fuller's son?

A. He is a father-in-law of Perry Fuller's son, of E. Fuller, and E. Fuller is a partner of Elder.

Q. Did he tell you where, in Lawrence, the property was situated on which that mortgage was?

A. He did not, sir.

Q. Was it a mortgage given to the firm of Perry Fuller & Co. or Macdonald & Fuller?

A. That I don't know; he didn't state that.

292 Q. What did he state to you about the bills receivable, notes, &c., in the Importers & Traders' Bank, mentioned in his statement?

A. He brought them to us—$2,800 they amounted to—of which he gave us about $1,300 of those notes. He gave us two notes of $500 each & one of $268 96. The notes, I believe, were all endorsed by Gibson.

Q. Who are the makers of the notes?

A. I think Buckhorn.

Q. At what place are they dated?

A. Dated "New York."

Q. The makers are residents here.

A. Yes, sir. The notes were given for some property that Perry Fuller, or Perry Fuller & Co., owned here in New York & sold to a man by the name of Gibson. I think Gibson sold it, or leased it, or something, to this man Buckhorn. The amount of the notes originally, some two or three years ago, was about five or six thousand dollars.

Q. Did he show to you or to your partner, Mr. Wheeler, the mortgages which he said he had as security for the first item of $10,000 mentioned in this statement?

A. He did not, sir; he said that they were in his papers out at his home.

Q. At Rochester?

A. No; I think Ohio was where he lived, himself. His father was on the Rochester place.

Q. At what place in Ohio did he say he resided?

293 A. At ; he called it his home. It was where his wife was staying after they returned from New Orleans.

Q. The item of $3,800, property, near Rochester, mentioned in the statement, he didn't desire to be regarded as a part of his assets.

A. He didn't want to sell it—raise money on it. Going from Rochester, he was in the car with us, & pointed out to me this property which he owned there, & said that he had made a great mistake in loaning his money out on a mortgage in Ohio, because, if he had only bought this piece of property next to this, it would have doubled him his money. It is in the suburb of Rochester and a good piece of property.

Q. When was it that he first applied to your house to sell him goods?

A. I should think it was along about the 15th or 16th of August—about the middle of August. He had been in there, talking with Mr. Wheeler, my partner, several times before I had anything particularly to say to him. On the 20th of August was about the first commencement of my conversation with him.

Q. Had he come alone or in company with any person?

A. He had been alone several times, & several times was accompanied by Major Fuller, (Perry Fuller.)

Q. Who was present at the time this statement was made?

A. Mr. Wheeler & myself & Mr. Hayes; we three together.

Q. Was Perry Fuller in the store at that time?

A. He was not, sir; he had been in previously with him.

294 Q. On that day?

A. Yes, sir.

Q. Had you had any conversation with Fuller in reference to Hayes' means or responsibility?

A. Never up to that time; after the 20th I did speak to Fuller.

Q. Did you have more than one conversation about it with Fuller?

A. Yes; I think I had two or three. He rather assisted Mr. Hayes in some measure, in advising him, I suppose, in purchases, & so on.

Q. At the first conversation that you had with Fuller in respect to Hayes, what took place? Just state the substance of it as far as you can now remember it.

A. The first conversation I had with Major Fuller was when Mr. Hayes was present. I' was like this: "Mr. Wheeler has been talking to me about selling goods to Mr. Hayes, and I suppose that you are to be connected with him in this transaction; my objections are to you, Major Fuller, you are so mixed up with the Government in New

Orleans, therefore we must decline to have anything to do with you, directly or indirectly. We can have nothing to do with you; I am very sorry to say so, because we have had dealings together to a very large amount." I suppose our dealings with Fuller & Macdonald, since the war commenced, had amounted to about a million of dollars, and he has always kept his word with us and made money. Says I, "We have always made money out of you, & you have paid us; you owe us
295 nothing, and we owe you a good deal of good feeling, but you have got yourself so mixed up with Government matters in New Orleans that we can't have anything to do with you." He said, in reply, "I have nothing to do with this whatever; it is Mr. Hayes' matter entirely. I have advised him to go to Ottawa, which is my own place—we used to sell him (Fuller) goods at Ottawa & Lawrence—to go to Ottawa; there is no better place for you to commence business in the United States. You go there and open your store, and you will make money;" and said he, "All the interest I have is that he has been a faithful clerk for us, and I want to see him succeed. I wanted him to come here and do business with you, because I am satisfied that it would be for the mutual benefit of both of you, but I have no interest, directly or indirectly, in this matter." "Well," said I, "that will alter my view some, because I have seen Mr. Hayes in here talking to Mr. Wheeler. Mr. Wheeler has talked to me in regard to opening an account with Mr. Hayes, and that has been my objection. Mr. Hayes has told Mr. Wheeler that you had nothing to do with it; but," says I, "where does he get the money from? I don't know how a clerk for you can have so much property as he tells Mr. Wheeler 'hat he has." Mr. Wheeler asked Mr. Hayes for a statement, which he himself took, and is the one which I have sworn to, and you have already. On presentation of that statement to me by Mr. Hayes & Mr. Wheeler, I then examined it, as I have stated, as to the different items of security, as to their value, &
296 to see how Mr. Hayes could make himself out worth $50,000, which he represented himself to be worth. And, after examining this statement thoroughly, being satisfied that there was property there worth something near the amount represented, on the 20th day of August I consented to sell him goods.

Q. Did Perry Fuller give him any assistance or advice towards purchasing the goods.

A. Yes; there were some certain Indian goods that he advised him as to quantity to buy. I think that he spent part of two days—perhaps there were 2½, more or less, that Mr. Fuller was at the store there with him. I would say, in explanation, that Mr. Fuller had been in the habit of coming to our store a great deal, and his letters were directed to our care, and Mr. Hayes, being in there selecting goods & Mr. Fuller coming in there to get his letters, he would ask him as to this kind or that kind of goods, & as to the quantity. It come up naturally, you know, in the transaction of the business.

Q. Then he had the advice & assistance of Fuller, more or less, throughout all his purchases from you?

A. Yes, as a general thing he consulted him in the store, and my impression is I think they boarded at the same hotel, and it would be natural for them to talk matters over there.

Q. Do you recollect at what hotel?

A. I think that they were at the Metropolitan or the St. Nicholas Hotel.

Q. Did Fuller give Mr. Hayes any advice or assistance in
297 *in* respect of the insurance of the goods—getting them insured?

A. No and yes both, I will say to that. We send down the Atlantic Insurance Co., where we have an open policy, a memorandum as to the rates of insurance. The rate of insurance that they put down was something like 3 per cent. Mr. Hayes came into the office, & we showed him the memorandum. "Why," said he, "that is outrageous. It is double the rate, and I cannot pay any such rate for insurance." "Well," says I, "I suppose the Atlantic Co. understands the rates and reasons better than we do, and we will look into it; you had better make enquiries also." About this time Mr. Hayes was inside of the office.

Q. This conversation was with whom?

A. With William Hayes, Mr. Butts, (our bookkeeper,) & myself. The boy brought up from the Atlantic Ins'e Co. the memorandum of the rates of insurance, and we were showing it to him. We thought it was very high, & called his attention to it. Whilst he was there talking this matter over Perry Fuller came into the store. He walked into my office, which was not the book keeper's office—walked into my office, & a moment or two afterwards there was a man came in—I think on the twenty something of August—with a draft for $100.

Q. Was it a man named Hellen?

A. Well, yes, sir; I think the draft was payable to him. The book-keeper didn't know this man, & Mr. Fuller stepped up to the window & said, "It is all right, pay that draft," and we paid him $100 for it. Mr.
298 Hayes says to Mr. Fuller, "The insurance is 3 per cent.," & Mr. Fuller replied, "Why," says he, "that is double what we have ever paid." That, I think, was all was said, & Mr. Wheeler came into the store then, & Mr. Hayes & Mr. Wheeler talked the matter over; & Mr. Wheeler telegraphed to St. Louis. I think Mr. Wheeler wrote the telegram for him to a firm there—I forget the name of the firm—as to the cost of insurance there; and their answer was "1½ per cent.," which came back a day or two afterwards.

Q. Have you no present recollection as to whether Fuller said at that time to Hayes that he had better go & have that insurance corrected or changed?

A. No, sir; I don't think he said so. You see, in the outside of the office there is a little window, where this man with the $100 draft stepped up, and Mr. Fuller stepped right up here. The book-keeper paid the man the $100, and then Mr. Hayes says, "They ask me 3 per cent. to insure my goods;" and Fuller said, "Why," said he, "it is double what I used to pay." I think that was the reply, & I don't think Fuller said anything more about it, because he walked into the office, got his letters, & in a few moments more, I think, he left the store. Mr. Hayes & Mr. Wheeler together telegraphed to St. Louis, and in the course of a day or two he got a reply from there that it would be 1½ per cent., and we then had this insurance done at the Atlantic cancelled.

Q. Now, as to a portion of these goods, do I understand you to say that you were paid in cash?

A. We have received in cash only about $2,000.

Q. And when did you receive that $2,000?

299 A. Well, it is rather more than that. Mr. Hayes paid us $1,000, in the month of January, 1870, I think it was; I don't know. It was, perhaps, payable in December, 1869, but I think we didn't get the avails of the note until January, 1870. I think there was $500 paid to us about last October, and I think there was $400 paid to us this week. We collected $400 on Buckhorn note, that Gibson endorsed.

Q. How much now remains unpaid to you on account of Hayes' purchases in all?

A. Do you want it exact?

Q. As near as you can come to it.

A. Without any interest it is $21,007 53.

Q. Do you hold any collateral security for that sum?

A. We hold steamboat stock, which was turned over to us by Mr. Hayes to collect.

Q. Anything else?

A. Well, we hold, & we don't hold either——

Q. What I want is what you actually have—what security you have, if any?

A. Well, we have this Kansas property, which is to be deeded—the property in Kansas of $3,800; that is to be deeded to us, if it is not sold; if it is sold, the money and notes ought to come to us.

Q. Anything else?

A. Nothing of this kind here. I don't know whether it pertains to this or not. We have a note made by Stetor & Co., which was paid in December, I think, for $10,900, belonging to Mrs. Mary Fuller,
300 the avails of which we are allowed possession of until Mr. Hayes pays us. In a settlement with Stetor, there was, I believe, about $16,000 coming to Mrs. Mary Fuller, which she deposited with us, which was the avails of some securities that Stetor sold belonging to her. I think she has drawn from us in the neighborhood of $5,000. She also—but it does not come from her alone—deeded me a house and lot in Washington. It is a deed from Stetor & Mrs. Fuller. I think the property was in Mr. Stetor's hands as trustee, and it was deeded by Mrs. Fuller & Stetor to me in trust.

Q. Mrs. Mary Fuller, that you speak of—was she related to Perry Fuller?

A. She is his wife. I understood she is a second wife.

Q. When was it that you got this $16,000 of Stetor papers?

A. My impression is, something like the middle of August.

Q. You received it, then, about the middle of August?

A. Yes, about the 15th of August, [about the] time the business transaction [with Hayes] was talked about, and the disappointment in regard to his mortgage. Well, the conversation with him was about the 20th of August, when we opened the credit. It was something like this: "Here are one-half of your bills, about, cash, and that part of it we want to arrange." & he agreed to pay the cash on these mortgages when collected by us. I said, "Supposing there was a disappointment in regard to collecting this $10,000, which you propose to pay us for your cash bills, where are we to get the money for these cash bills?"

Q. What did he say to that?

301 A. He says, "I don't know but I can arrange it; I will see." And he came in the store, I think, with a note from Mrs. Fuller, stating that we could retain the Stetor notes or the avails of the Stetor note for that purpose.

Q. About what time was that?

A. I think about the 22d of August—something like that. I think that we have got a note from Mrs. Fuller to that effect.

Q. Can you produce that note or a copy of it?

A. I will give a copy of it.

Q. At that time what amount of the Stetor notes were in your possession?

A. It was simply one note of $10,900. I think *I think* it was due in December.

Q. And that has since been paid, & you hold the proceeds?

A. It was protested, & has since been paid to the credit of Mary Fuller. We hold that money with the privilege of keeping it until Hay's pays us that amount.

Q. Before Hayes brought in that letter of Mrs. Fuller, authorizing you to retain that note of $10,900?

A. Whether she brought the note in or Hayes brought it in, I don't know. I saw it (the note) there in the store with a letter from Mrs. Fuller, brought in by herself or some one, (she was in New York then,) or by Mr. Hayes, I don't know which. I would say, in addition, that the letter was not worded to suit me, & I wrote a letter, or our book-keeper did, & sent it to her at Washington, and she signed it & remailed it to us from there. The first one that came was returned to her.

302 It did not cover the point in the way I wanted it. The second letter is the one that I will give you a copy of.

Q. Have you also the first letter?

A. No, sir; that I sent back to her.

Q. Before you received the letter from Mrs. Fuller authorizing you to retain this Stetor note of $10,900, or its proceeds, had you any conversation with Hayes in reference to his procuring it?

A. No, sir; after assenting, agreeing to sell Mr. Hayes, he went down to select his goods, and, looking over this matter and talking to him about this $10,000 mortgage, I didn't feel quite satisfied in my mind that he was going to get the money for it on his return West, and then I said to him, "Hayes, now suppose you are disappointed in getting the money for that, why, here is this cash-bill of goods, a large amount, & for which we may have to remain out of our money for some time. You have got to arrange in some way so that I can get pay for my cash goods." And then this matter came up, because he was conversant and knew of this $10,000 note, he having been sent for to come here & accomplish this settlement with the Stetors, and I suppose he borrowed it of her in that way. He having been book-keeper for Fuller, or being present at the settlement, he knew of the note. This settlement, where this note was effected, was along some days before.

Q. When he brought the letter from Mrs. Fuller authorizing

303 you to retain that note or its proceeds, did you have any conversation with him (W. Hayes) about it?

Q. As I say, I was not present in the store when he brought it in. I found it there, and then ascertained that Mrs. Fuller had returned to Washington, & drew out the copy that I wanted her to sign, and wrote to her at Washington, requesting her to sign it. I am not sure but what Mr. Hayes sent that copy to her that I wanted signed; it is my impression that he did, and still I don't remember about it.

Q. Subsequently to that, you had, as I understand you, no further conversation with Hayes in reference to that note of $10,900?

A. No, sir; either before or since, because we have not seen Mr. Hayes here.

Q. About what time did he leave the city after making these purchases?

A. He left, I think, Saturday night, which was the 28th; that is my impression.

Q. August 28th?

A. Yes; his bills were to be forwarded to him, because after the attachment he was telegraphed to to come back here.

Q. And to what place was he telegraphed to to come back?

A. In Ohio, I think; either *Ohio* or Rochester, I think, in Ohio; and my impression is he had got away from there & gone further west than

that. I think it had to be repeated to St. Louis. He was telegraphed to first to Fairport, New York State.

Q. When did he then return to this city after the 28th?

304 A. I think he reached the city along in the middle of the coming week. I wasn't here. I didn't see him until the middle of the week.

Q. According to your present recollection, who first called on your firm with reference to the purchase of the goods which you sold to Hayes, Did he himself call alone, or did he call in company with Perry Fuller?

A. The first that I knew of his intention was his speaking to me; but, as I say, he had had several conversations with Mr. Wheeler, I think, previous to that.

Q. So far as your present knowledge or recollection goes, was he accompanied by Perry Fuller the first time when he came to your store with reference to making these purchases?

A. I don't know, because I didn't see him there; I think not.

Q. You say that you had known Mr. Hayes for about 4 years?

A. 4 or 5 years.

Q. Prior to August, 1869?

A. Yes.

Q. How had you first become acquainted with him?

A. When he was in the Interior Department at Washington, Mr. Wheeler made his acquaintance there; & I think he came, when in New York, to our store to see us; and about that time we were doing a very large amount of business with Fuller & Macdonald, and we had an immense amount of vouchers, sometimes to the extent of 3 to

305 $400,000, Indian vouchers, which had to pass through the Interior Department. Mr. Wheeler made his acquaintance there, I think, first. From there he went into the employ of Mr. Fuller, and from there came to New York here—was his book-keeper.

Q. About what time was it, according your recollection, that he went into Fuller's employ?

A. Time slips by so very rapidly that I may make it shorter than it really is. I think that it must have been in the neighborhood of 1863, which would make it some 6 years. It may have been 1864, but it was during the war, on the frontier, when they were using a great many goods there.

Q. Was it before or after the fall of Richmond?

A. Before the fall of Richmond.

Q. It was, then, prior to 1864 that he went into the employ of Perry Fuller & Co?

A. Yes, sir; I think it was prior to 1865.

Q. Were Perry Fuller & Co. in business in this city?

A. They had an office in this city.

Q. At what place?

A. They were at the corner of Broadway & *Park Place*, [Murray.] They afterwards were in Murray street; had their office in Stetor's place of business.

Q. Was Hayes attending to the business at their office in this city?

A. Yes; corner of Broadway and Park Place, I think it was?

Q. Down to what time did Perry Fuller & Co. continue to do business in this city?

306 A. I think in 1867—maybe 1868. In 1867 or 1868 I think they closed up here.

Q. And then Fuller went to New Orleans as collector of that port?

A. No, sir; he went to Washington & lived in Washington some time.

He made a strong effort to be Commissioner of Internal Revenue, or something like that, and I think he spent some time at that. I don't know but what it was the greater part of the year. I think it was the last year of President Johnson's administration that he was appointed collector at New Orleans.

Q. When the firm of Perry Fuller & Co. gave up business in this city what became of Hayes; did he accompany them to Washington?

A. Yes, sir; the books & papers were all moved over to Washington & their office was there.

Q. And Hayes went with Perry Fuller & Co. to Washington?

A. Yes, sir; they had a great deal standing out West—a great deal of money due them. He travelled a good deal for them & had charge of their books.

Q. He continued with Perry Fuller & Co., at Washington, down to the time that Fuller went to New Orleans?

A. As I understand.

Q. Did you learn from Hayes whether he accompanied Fuller to New Orleans?

A. No, sir; I don't know that fact. That is my impression, that he went there. I have heard him say that he was in New Orleans with Mr. Fuller.

307 Q. In what capacity was he acting in New Orleans?

A. Clerk in the custom-house, or something like that. I never asked him his position at all; don't know what it was.

Q. So far as you know, had Mr. Hayes ever been in business for himself prior to his starting in this business?

A. Not that I know of. He had talked to me several times about going into business, as I related in the early part of my testimony.

Q. Did you have any conversation at all with Mrs. Fuller, aside from the letter, in reference to her allowing you to retain this Stetor note?

A. I have not seen her in our store; didn't see her.

Q. Did you have any conversation, or did any of your partners, so far as you know, have any conversation, with her on this subject?

A. Not that I know of.

Q. Did you have any conversation with Perry Fuller himself, in reference to your getting or retaining that note?

A. No, sir; I did not. I don't know but what Mr. Wheeler may have said something to me in regard to it.

Q. Have you heard anything from him or from Mr. Wheeler on that subject?

A. I have not, sir?

Q. From whom did you receive the Stetor notes originally?

A. The notes & some $5,600 in cash, on my return from the country, I found credited to Mrs. Mary Fuller on our books.

Q. You were not in the city, then, when they were actually delivered at your house?

308 A. No, sir.

Q. Which member of your firm attended to that business?

A. I suppose our bookkeeper, Mr. Butts. He was also a partner.

Q. Have you now any recollection of the date when you first received those Steter notes and money?

A. My impression is that it is the neighborhood of 15th or 18th of August. I don't know. I may be wrong there—perhaps about the 20*th* [12th.] I may be mistaken about it.

Q. What you term the Stetor notes and money came from a firm of that name in the city, did it not?

A. Yes, sir.

Q. Do you recollect the name of the firm?

A. Lewis Stetor & Co. They came from Lewis Stetor individually; at least, the note was signed "Lewis Stetor."

Q. Have you at any time had any conversation with Perry Fuller in reference to these Stetor notes or that Stetor money?

A. I can't say that I have. I have with Hayes. I told Hayes I wished he could get Mrs. Fuller to allow us to place that directly to his credit. I have not to Mr. Fuller, because, I think, he left here very soon after. I don't know as I have seen him, for I forget when he was here?

Q. Have you known of any other employment that Hayes has ever been engaged in except his employment for Perry Fuller & Co., and, this business that he was about starting in Kansas, and his occupation in the Interior Department at Washington, & his position in the custom-house at New Orleans?

A. No, sir; not as far as I know of. He was in Washing-
309 ton with Fuller & also here in New York and at New Orleans.

Q. These two firms that you speak of, Macdonald & Fuller & Perry Fuller & Co., are they one & the same or different firms?

A. They are one & the same, or were at the time, but I think it was dissolved, so that Perry Fuller & Co. then consisted of De Wolff & Mr. Fuller's son; I don't know the year.

Q. As to the portion of the invoices of the goods which were sold Hayes on credit, did you take his notes?

A. Yes, sir.

Q. Have you the notes still?

A. Yes, sir.

Q. How were they drawn?

A. Drawn, I think, for four months, or 3 months, or 5 months, payable to the order of Buckley, Sheldon & Co., payable at Ottawa, Kansas, with the current rate of exchange *or* New York.

Q. Did you have any endorser on the notes?

A. No, sir; no endorser on the notes.

Q. Do I understand you to say that it was originally contemplated that Hayes & De Wolf should go into this business at Ottawa together?

A. Well, this is a conversation that Mr. Hayes told me that Mr. De Wolff & himself had had, that they contemplated going into business together.

Q. At Ottawa?

A. I don't know whether he mentioned Ottawa or not, but they con-
templated going into business together, & were each to contribute,
310 as I understood, $20,000 to $25,000—a working capital of $40,000; and he asked me whether that would be sufficient cash means to do a jobbing business out there.

Q. Did he say anything to you about having any special partner or capital advanced to him in carrying on that business?

A. No, sir; he spoke of the means as his own.

Q. What reason did he give for abandoning the proposed arrangement with De Wolf?

A. Because the developments in New Orleans were of such a character that De Wolf didn't consider himself safe to stay here; he went to Canada; he was afraid that he might be arrested. Fuller was arrested,

and, on account of his being a clerk there with him, why, he didn't know but what he would get in the same way, & he preferred to put himself out of reach.

Q. Was not De Wolf also a member of this firm of Perry Fuller & Company?

A. Yes, sir.

Q. How long had Fuller, or Perry Fuller & Company, been carrying on business in Ottawa or Lawrence, Kansas, prior to this time?

A. The first we knew of Mr. Fuller was a partner of Governor Carney at Kansas, and, after a year or so with Governor Carney, he seperated from him; whilst he was with Governor Carney he bought goods of us for his individual store at Ottawa, in his individual name, but he came to us through Governor Carney; that was where our
311 first acquaintance commenced with Fuller. How long he had been in business prior to that time, I don't know.

Q. About what time was it that he commenced to buy goods from you for his individual store at Ottawa or Lawrence?

A. I think it was about '63.

Q. And down to what time did he continue to buy goods for that store in that way?

A. I think that he continued down for about a year; my impression is that Governor Carney objected to his having a seperate interest or establishment, and he wound it up.

Q. Where was Governor Carney carrying on business?

A. At Leavenworth, Kansas.

Q. Do you know, or have you any knowledge at all, as to the reason why the Stetor notes were entered on your books to the credit of Mrs. Fuller; was there any reason for so entering them to her credit?

A. The reason was that it was her individual property. There was some deposits from her individual property, as I understood, in hands, which they seperated and paid the money over. She had individual property of her own.

Q. You have no personal knowledge on this matter?

A. No, sir; the note was made payable to her own order.

Re-examined:

Q. (By Mr. Nelson.) The conversation that you relate as occur'ing between Hayes and De Wolf as to their proposed co-partnership,
312 was that conversation held in your presence?

A. No, sir.

Q. Mr. Hayes simply related it to you?

A. He simply related it to me in our store.

Q. These statements that you have made in your cross-examination as to the movements of Hayes out West, and his connections with Major Fuller, &c., are they of your own knowledge, or do you simply derive them from information?

A. Well, it is information I get from Mr. Hayes and Mr. Fuller both; it is from information; I don't know it, because, to know it, I'd have to have been there present.

Q. Did Hayes state to you that he had gone West travelling for Perry Fuller & Company in settling up their matters?

A. Some time prior to this he did—not at that time.

Q. But he had stated to you at one time?

A. Yes. I knew that he went out to attend to a sale of some cattle.

Q. When you asked Mr. Fuller as to how Hayes, his clerk, could come by so much money, what answer did Fuller make?

A. I don't think that was the exact question that I asked him.

Q. That is the substance of it. You failed to give his answer when speaking of this matter in your cross-examination.

A. Mr. Fuller said that he had been a long while in their employ, and that he had means—some money that he borrowed of him, and some interest in operations arising out of contracts—and that they had always paid him a large salary, and that he was always very
313 economical and saved it. It was a large amount of money, and the greater part of it was derived from profits in operations of that kind with the Government, sales of goods, contracts for feeding Indians, and so forth.

Q. At the time that this conversation occurred as to the insurance, when this gentleman appeared at the desk there to receive his payment of that hundred-dollars draft, was there any quarrel between Hayes and Fuller, or did either of them get angry with the other?

A. No, sir; it was just as I stated. When Major Fuller came into the store, Hayes was inside, in our office, and we were talking to him about the rates of insurance, and he expressed himself dissatisfied; said that it was altogether too high, and we were interrupted during that conversation by this man presenting a draft for a hundred dollars, and Mr. Butts paid the man the bills for the draft. He didn't know him, nor know the endorsement; and Major Fuller was there, and he said, "That is all right." Then Butts stepped up to the window, and paid him the money. Hayes then spoke about charging him 3 per cent. for his insurance. I think that was about the rate.

Q. Did Major Fuller, about that time, instruct Hayes to go down and have it corrected?

A. Well, he couldn't have done that, because Mr. Hayes had nothing whatever to do with it. We had applied for the insurance, and the only persons that could correct it was ourselves.

Q. The insurance was effected through you?

314 A. It was not effected. We have an open policy.

Q. The application was made through you?

Q. We made an application, and they put on a rate, and we showed him that rate. He had nothing whatever to do with it, only to assent to paying the premium or dissent, and he dissented from paying that premium.

Q. At this time, was Fuller buying any goods himself?

A. Not to my knowledge. If he did, it was something for his own family use.

Q. He was not buying any goods of his own?

A. Not to my knowledge.

Q. This note of $10,900 00, and the cash that was deposited with you, you say was deposited about the 12th or 15th of August?

A. Yes; some time before this transaction.

Q. And the application of Hayes to purchase goods from you about the 20th of August?

A. Yes, sir.

Q. Some time after the deposit of the money?

A. Yes, sir, I think.

Q. This letter, which Mrs. Fuller sent to you, contained the terms under which you hold this note and this cash at present?

A. Yes. The cash, I think, she has drawn all out.

Q. Yes, but I mean the cash realised from the note.

A. Yes.

Q. Do you know of any application been made to her to allow this note to be placed to the credit of Hayes?

A. No; not to her. I applied to Hayes, wrote to Hayes, and
315 asked him if he could get her assent to it, so we could wipe it off the books and credit it to him.

Q. Did you receive any reply?

A. No, not direct, to that. I simply got a reply from her, stating that she wished me to take notice not to pay out a dollar unless on her own personal order, and I supposed Mr. Hayes had been to see her, and she was afraid they were going to get it away from her, and she sent that letter.

Re-cross-examined by Mr. Devine:

Q. Have you in your possession certificates, and powers of attorney attached, of the steamboat stock?

A. Well, we have had it, but we have not now.

Q. Will you be kind enough to make us copies of them, so as to annex them to your deposition?

A. Yes. I sent them out to Memphis, and the party that was to attend to them (Judge King) shot himself up here at the New York Hotel, and his partner came on for his remains, and I requested him to stop at Memphis, get the notes, and return them to us.

Q. You hold one of the mortgages mentioned in this statement, do you not—a deed of some property there?

A. No, sir.

Q. An agreement, rather?

A. No, sir. It was simply a verbal agreement on his part that, if that mortgage had not been paid, it was to be forwarded to us; if it had been paid, why, we were to have the money.

THOMAS T. BUCKLEY.

316 And attached to the foregoing deposition are the following exhibits, each marked Exhibit No. 4, and are in the words and figures following, to wit:

(Copy.)

$4,050 80.] NEW YORK, *August* 24, 1869.

Five months after date I promise to pay, to the order of Buckley, Sheldon & Co., forty hundred fifty & $\frac{80}{100}$ dollars, at the office of P. P. Elder & Co., Ottawa, Kansas, value received, with the current rate of exchange on New York.

(Signed) WILLIAM HAYES.

No. . Due .

Correct copy:

THOMAS T. BUCKLEY.

(Copy.)

$3,448 14.] NEW YORK, *August* 21*st*, 1869.

On the fifteenth day of October, '69, after date, I promise to pay, to the order of Buckley, Sheldon & Co., thirty-four hundred forty-eight & $\frac{14}{100}$ dollars, at the office of P. P. Elder & Co., Ottawa, Kansas, value received, with the current rate of exchange on New York.

(Signed) WILLIAM HAYES.

No. . Due Oct. 15–18.

Correct copy:

THOMAS T. BUCKLEY.

(Copy.)

$3,448 14.] NEW YORK, *Aug't* 21*st*, 1869.

On the first day of October, 1868, after date, I promise to pay, to the order of Buckley, Sheldon & Co., thirty-four hundred forty-eight & $\frac{14}{100}$ dollars, at P. P. Elders & Co., Ottawa, Kansas, value received, with the current rate of exchange on New York.

(Signed) WILLIAM HAYES.

No. . Due 1–4 Oct., '69.

Correct copy:

THO'S T. BUCKLEY.

$2,032 26.] NEW YORK, *Aug't* 26, 1869.

317 Three months after date I promise to pay, to the order of Buckley, Sheldon & Co., twenty hundred thirty-two & $\frac{26}{100}$ dollars, at the office of P. P. Elder & Co., Ottawa, Kansas.

(Signed) WILLIAM HAYES.

Due 26–29 Nov., '69.

Correct copy:

THOMAS T. BUCKLEY.

(Copy.)

$3,448 14.] NEW YORK, *Aug't* 21*st*, 1869.

On the first day of Nov'r, 1869, after date, I promise to pay, to the order of Buckley, Sheldon & Co., thirty-four hundred forty-eight $\frac{14}{100}$ dollars, at the office of P. P. Elder & Co., Ottawa, Kansas, value received, with the current rate of exchange on New York.

(Signed) WILLIAM HAYES.

No. . Due 1–4 Nov., '69.

Correct copy:

THOMAS T. BUCKLEY.

(Copy.)

$1,278 25.] NEW YORK, *August* 27, 1869.

Four months after date I promise to pay, to the order of Buckley, Sheldon & Co., twelve hundred seventy-eight & $\frac{25}{100}$ dollars, at office of P. P. Elder & Co., Ottawa, Kansas, value received, with the current rate of exchange on New York.

(Signed) WILLIAM HAYES.

No. . Due Dec. 30, '69.

Correct copy:

THOMAS T. BUCKLEY.

(Copy.)

$2,032 26.] NEW YORK, *August* 26, 1869.

One hundred days after date I promise to pay, to the order of Buckley, Sheldon & Co., twenty hundred thirty-two & $\frac{26}{100}$ dollars, at the

office of P. P. Elder & Co., Ottawa, Kansas, value received, with the current rate of exchange on New York.

(Signed) WILLIAM HAYES.

No. . Due Dec. 7, '69.

Correct copy:

THOMAS T. BUCKLEY.

318 MEMPHIS, *July* 10, 1869.

Mr. W'M HAYES.

DEAR SIR: Your favor June 24 came duly to hand; and, in reply, would say that the transfer of McDonald's stock was duly received, and is all right. I will send you the statement, as you request, in a few days, and will then write you more fully.

Yours truly,

JNO. B. DAVIS,
Sup't M. & W. R. P'k't Co.

Correct copy:

THOMAS T. BUCKLEY.

WASH., D. C., *April* 28, 1869.

[Int. rev. st'p, 5-c., cancelled.]

I have this day bargained and sold to William Hayes all my right, title, and interest from the time I first went into the line known as the Memphis White River Packet Company, Capt. John B. Davis, sup't, he being fully entitled to all profits and sharing all losses; or, in fact, taking my position in said company, said interest amounting to about (¼) one-fourth of said line, in consideration of fourteen thousand dollars, to me in hand paid, receipt whereof is hereby acknowledged; and Capt. John B. Davis is hereby authorized to transfer said interest entire to said W'm Hayes.

In witness whereof I place my hand and seal this day above written.

ALEXANDER MCDONALD. [L. S.]

Witness:
J. E. DILLON.

Correct copy:

THOMAS T. BUCKLEY.

319 The note of William Hayes, dated 28 Aug't, '69, at four months, for thirty-seven hundred four & $\frac{30}{100}$ dollars, pay'l. at office of P. P. Elder & Co., Ottawa, Kansas, was delivered up to him by P. P. Elder & Co., Hayes paying seventeen hundred four & $\frac{30}{100}$ dollars, and drawing on us for balance, two thousand dollars, which we charge to his (Hayes) ac. as cash. N. Y., 17 January, 1870, as p'r copy of his draft annexed.

$2,000.] OTTAWA, KANSAS, *Jan'y* 6, '70.

Pay to the order of People's Bank two thousand dollars, value received, and charge same to ac. of

(Signed) WILLIAM HAYES.

To Mess. BUCKLEY, SHELDON & CO.,
No. 75 & 77 Leonard st., New York.

Correct copy:

THOMAS T. BUCKLEY.

WASHINGTON, D. C., *August 23rd*, 1869.

BUCKLEY, SHELDON & Co.

GENTLEMEN: I have sent you a note of L. Stettauers, dated New York, Aug. 20th, 1869, payable on 15th of December next, for ten thousand nine hundred dollars, which note I placed in your hands as collateral security for any indebtedness of William Hayes. The note, or its proceeds, you are to keep until his indebtedness to you is paid, after which the note, or the proceeds of said note, is to be returned to me on my order, signed by me.

Resp'y,

MARY FULLER.

Correct copy:

THOMAS T. BUCKLEY.

Also, the deposition of Gilman B. Dubois.

320 *Deposition of Gilman B. Dubois.*

The deposition of Gilman B. Dubois, taken before Harrison C. Gibson, a notary public in and for the county of New York and State of New York, at the city of New York, on the 12th day of February, A. D. 1870.

GILMAN B. DUBOIS, examined by Mr. Nelson:

Q. Where do you reside?

A. In New York, sir; St. Nicholas Hotel.

Q. Have you a place of business in the city of New York?

A. Yes; 343 Broadway.

Q. What is your business?

A. Boots and shoes.

Q. Do you know William Hayes, plaintiff in this action?

A. I do.

Q. How long have you known Hayes?

A. I knew him at the time of this purchase; perhaps a day or two before that I was introduced to him.

Q. Have you ever had any business transaction with Hayes?

A. Never, but this.

Q. That is this bill of goods?

A. This bill of goods—yes.

Q. Did you sell Hayes any goods on or about August 26th?

A. Yes.

Q. Do' this invoice contain a correct statement of 'he goods sold?

A. Yes.

321 Q. And their prices at that time?

A. Yes.

Q. That was the market price at the time?

A. Yes.

Q. To whom was the credit given?

A. To Mr. Hayes.

Q. Did you know any other person in the transaction except Mr. Hayes?

A. No, sir.

Q. Did Hayes ever have any conversation with you as to going into business at this place and purchasing goods?

A. Yes, sir; at the time that he came in for the credit.

Q. What representations, if any, did he make as regards the proposed entering into business?

A. Well, in regard to his responsibility, he referred us to a statement that he had made to Buckley, Sheldon and Company. My partner went over and took a copy of it.

Q. Did he state to you whether he was interested with any parties or whether he had any copartnership formed?

A. No, sir.

Q. Did he make any statement as to whether he was entering into business himself, or how—any direct statement?

A. That he was going into business in Ottawa by himself.

Q. How were these goods marked?

322 A. They were marked ⟨H⟩ and sent to Ottawa, Kansas; by what line, I don't know.

Q. Who directed the shppiing of them?

A. Hayes.

Q. Were these goods sold on cash or on time?

A. On time.

Q. Has it been paid?

A. It has not.

Q. How long have you been a merchant?

A. I have been in New York eight years.

Q. Eight years a merchant in New York?

A. Yes.

Q. Were you informed of the attachment of these goods?

A. I was.

Q. What effect, if any, would such an attachment have on the credit of a merchant buying his first bill of goods?

A. It would destroy his credit with us, and, I presume, with everybody else.

Cross-examined by Mr. Devine:

Q. By whom was Hayes introduced to your house?

A. Introduced to me by a salesman.

A. And by whom to your salesman?

A. That I could not say, sir.

Q. What was the name of your salesman?

A. Bennett.

Q. What is his full name, sir?

A. Well, I can't tell you, sir. They called him Vincent Bennett; but he has another name, I think.

323 Q. Where is your place of business?

A. 343 Broadway, now. It was then 374.

Q. Are you acquainted with Perry Fuller at all?

A. No, sir.

Q. Have you ever seen him.

A. Yes, sir; I was introdnced to him.

Q. When?

A. At this time.

Q. Did he come to your store with Hayes?

A. He was there with Hayes. Whether he came with him or not, I don't know.

Q. What was he doing there?

A. I don't know. He was back in the office with Hayes. I supposed he had been looking at the goods.

Q. He and Hayes together, so far as you know, had been looking at the goods?

A. Yes.

Q. Goods that Hayes was about buying?

A. Yes, sir.

Q. Did you have any conversation with Fuller in reference to Hayes' means?

A. Not a word.

Q. Did you have any conversation at all with Fuller at that time?

A. Not at all. No, sir.

Q. Was it stated to you by Hayes or by Fuller in what capacity Fuller was acting in connection with Hayes?

A. No, sir; nothing said with regard to Fuller at all.

324 Q. Did you get notes for these goods?

A. Yes.

Q. How were they drawn—to whose order?

A. To the order of Perry Fuller.

Q. Were they endorsed by him.

A. Endorsed by him.

Q. You will please produce and annex copies of the notes to your deposition.

A. Yes.

Q. How did you come to get the endorsement of Perry Fuller on the notes?

A. I could not say whether Hayes first said that Perry Fuller would endorse the notes or whether the salesman did. They had gone through and looked at the goods before I had seen either of the parties or knew anything of their going to buy.

Q. Was anything said to you at the time that Perry Fuller's endorsement was offered to you in reference to Fuller's responsibility or means?

A. No, sir; I didn't ask a question about it.

Q. Which member of your firm attended personally to this transaction of Hayes?

A. I did. I gave him the credit.

Q. And this salesman under you attended to the business?

A. Yes, sir; the goods that they had marked out amounted to a larger sum than this. I declined to sell them any large amount, and reduced it.

325 Q. Was it you or your partner that went to the office of Buckley, Sheldon & Company to make enquiries?

A. My partner.

Q. You only know, then, what your partner reported to you?

A. That is all.

Q. Did you take down in writing the statement that he had taken from Buckley, Sheldon & Company?

A. I supposed that he had taken it in writing, but I looked for it yesterday, and could not find it. There is no record of it at all.

Q. Do you know, of your own knowledge, who gave directions about forwarding these goods?

A. Mr. Hayes.

Q. Did your hear him give directions?

A. Well, I don't know that he gave the shipping directions. They were entered on the books. Of course I was not standing by the side of them when that was done.

Q. Was anything done, to your own knowledge, as to the insurance of these goods?

A. Not to my knowledge.

Q. (By Mr. Nelson.) I understand you to say that Hayes simply made a statement to you that he had made a full statement to Buckley, Sheldon & Company?

A. Yes, sir.

Q. And your partner went there and got a copy of it?

A. Yes, sir.

Q. Was that statement satisfactory?

326 A. Yes, sir.

Q. And you made the credit on that report?

A. Yes, sir.

Q. And you knew no otl er person in the transaction than Hayes?

A. No, sir.

GILMAN B. DUBOIS.

And annexed to the foregoing deposition are exhibits, each of which are marked Exhibit No. 5, and are in the words and figures following, to wit:

$803.] NEW YORK, *August* 26, 1869.

Sixty days after date I promise to pay, to the order of Perry Fuller, eight hundred & three dollars, for value received, at Peter P. Elder & Co.'s office, Ottawa, Kan., with the current rate of exchange on New York.

(Signed) W'M HAYES.

No. Due 25–28 Oct.

(Written across the end:) Du Bois, Magovern & Co.

(Endorsed:) (Signed) PERRY FULLER.

$803.] NEW YORK, *August* 26, 1869.

Ninety days after date I promise to pay, to the order of Perry Fuller, eight hundred & three dollars, for value received, at Peter P. Elder & Co.'s office, Ottawa, Kan., with the current rate of exchange on New York.

(Signed) W'M HAYES.

No. Due 24–27 Nov.

(Written across the end:) DuBois, Magovern & Co.

(Endorsed:) (Signed) PERRY FULLER.

327 $803 84.] NEW YORK, *August* 26, 1869.

Four months after date I promise to pay, to the order of Perry Fuller, eight hundred & three $\frac{84}{100}$ dollars, for value received, at Peter P. Elder & Co.'s office, Ottawa, Kan., with the current rate of exchange on New York.

(Signed) W'M HAYES.

No. . Due 26–29 Dec.

(Written across the end:) Dubois, Magovern & Co.

(Endorsed:) (Signed) PERRY FULLER.

GILMAN B. DUBOIS. JOHN P. MAGOVERN. W'M H. DUBOIS.

NEW YORK, *Aug.* 26, 1869.

Mr. W'm Hayes, bought of Dubois, Magovern & Co., wholesale dealers in boots and shoes of all kinds, 343 *Broadway.*

All correspondence relating to the business of the house, to secure prom't attention, should be directed to the firm.

Terms, . No exchange allowed.

1-2	24	men's kip ½ w. b'ts	27 00	54
15	12	" " " " "		33
16	12	" Turk. " d. s. "		37 50
17	12	" " tap "		39
18	12	" Patna kip d. s "		39
19	12	" kip ½ d. s. "		43 50
20	12	" " " " "		48
21	12	" a'cf " "		45
22	12	" gr'n tap "		66
328 23	12	" c'f cable sew. ½ d. s		48
24	12	" Knick cust. " "		54
25	12	" c'f ½ sole "	5 50	66
26	12	" " tap "	5 25	63
27	12	boys sp't ½ sole b'ts	2 25	27
28	12	" kip " " " r. top	2 75	33
29	12	" " tap "	3 87	46 50
30	12	ch'd sp't ½ sole c. t.	1 25	15
31	12	" kip " " "	1 50	18
32	12	y'ths' sp't " " "	1 75	21
33	12	" kip " " "	2 00	24
34	60	men's sp't pp. Cable brog	1 62	99 50
3	30	boys' kip ½ sole don	1 62	48 75
4	30	mens' " " " "	2 00	60
35	24	" c'f " " sew. cg	3 75	90
36	60	" b'f " w. brog	1 75	105
37	36	" " pp. Zouaves	2 00	72
38	36	boys'" " "	1 50	54
5	15	" " " ½ w. Cong	1 75	26 25
3	10	" " pp. " box-toe	2 25	22 50
3	15	y'ths' " ½ w. " " " "	1 62	24 37
10	20	" ac.f. " " brogans	89	17 50
14	12	" kip " w. "	1 00	12
10	30	wo's b'f ½ sole pol	1 75	52 50
11	30	" acf " " l. l. bal	1 75	52 50
13	30	" sp't " " c. l. "	1 40	42
11	30	" peb. gen " "	1 42	42 75
		GILMAN B. DUBOIS.		
329 13	30	wo's peb. gen ½ sole bal	1 50	45
10	30	" c'f " " l. l "	1 87	56 25
12	12	" imp't l'gt " tip pol	1 87	22 50
8	24	" goat " bal	2 12	51
7	12	" last " " s. g. cg	2 25	57
6	12	" " " " tip "	2 00	24
6	12	" " " " " "	1 67	20 10
6	12	" " m. s "	1 50	18
6	12	" " ½ sole, but	2 50	30
9	12	" " m. s. ½ pol	1 50	18
5	12	" bf. pp. bal	2 00	24
6	12	" kid h. slip	1 25	15
12	12	miss last, ½ d. s. Cong	1 62	19 50
8	12	" " " but. pol	2 00	24
8	12	" " rip bal	1 50	18
12	15	" kip Dutch "	1 25	18 75
14	12	" b'f ½ sole "	1 50	18
12	15	" peb. gen. ½ sole pol	1 75	26 25
9	15	" ch'd gen " " c. t. bal	85	12 75
8	15	" ac'f " "	1 25	18 75
14	15	" peb ½ sole se. tip	1 00	15
5	15	" " gen. plu. pol	1 32	19 87
9	12	" en. m. w. Polkas	75	9
5	12	" g't " p'fn h. bal	95	11 40
5	12	" " ½ sole tip pol	1 50	18
5	12	" " m. w " "	1 25	15
5	12	" last, ½ sole plu. cg	1 25	15
12	12	" " s. h. but. bal	1 12	13 50
330 9	12	" " col. pol	1 00	12
5	12	" " pat. lea' s. h. s. t	62	7 50
9	12	" eagle bal	25	3
9	12	" bronze. j. l. b'ts	55	6 60
9	12	" col'd bal	75	9
7	12	wo's last. ½ sole pol	3 12	37 50
9	12	" pet. gen. " " but	3 00	36
7	12	" goat pp. cg	2 25	27
		Strapp'g & cartage		7 50
				2,409 84

GILMAN B. DUBOIS.

Deposition of W'm G. Dickinson.

The deposition of W'm G. Dickinson, taken before Hanson C. Gibson, a notary public in and for the count' of New York and State of New York, at the city of New York, on the 14th day of February, 1870.

WILLIAM G. DICKINSON, sworn and examined by Mr. Nelson:

Question. Where do you reside?

Answer. In Brooklyn.

Q. Place of business in New York?

A. Yes, sir.

Q. Where is it?

A. 41 and 43 Warren Street.

Q. What is your business?

A. Has been grocery. I am not in it now.

Q. About the last of August or September?

331 A. Yes, sir.

Q. What was the name of your firm?

A. H. W. Belcher & Co.

Q. Do you know the plaintiff, William Hayes, in this action?

A. I do, sir.

Q. Have you ever had any business transaction with him?

A. I have.

Q. About when did those transactions commence?

A. 27th of August, 1869.

Q. Did you sell him goods on or about that time?

A. We did.

Q. Have you a copy of the invoices of goods sold?

A. I have.

Q. The invoices contains a correct list of the goods and the prices he paid for them?

A. Yes, sir.

Q. Or at which they were sold?

A. Yes, sir.

Q. You have examined that copy and know it to be a correct copy of the original furnished him?

A. I have; yes, sir.

Q. Was the credit given to William Hayes? To whom was the credit given?

A. William Hayes.

Q. Did you know any other person in the transaction?

A. No, sir.

Q. How were those goods shipped?

A. I do not know as I can tell you that here.

332 Q. Do you know, of your own knowledge, whether Hayes gave any shipping direction or not?

A. He did.

Q. He gave the shipping directions?

A. Yes, sir.

Q. Were those goods sold on time or paid for in cash?

A. On time—20, 35, and 60 days' time.

Q. Have you been paid for them?

A. No, sir.

Q. What is the amount of the bills of goods sold by you to William Hayes at that time?

A. The amount of the invoice is $2,677 76; interest, $24 39, to be added.

Q. How long have you been a merchant?

A. I have been in New York nearly 4 years.

Q. What effect, if any, would the seizure of person's goods who had purchased his bill from New York merchants, have upon his credit with your house?

A. Have a serious effect.

Q. Would you duplicate the bill to him?

A. No, sir.

Q. In your opinion, as a merchant, what effect would it have generally upon merchants?

A. It would depend upon circumstances. I would want to understand the features of the transaction to give him the second time after that; if I knew all the details afterwards, it might have the same effect. Where we have dealings with a very old customer we have a general
333 knowledge of the man, but with a new customer we would not sell until we were satisfied that we were right. Where a man buys his first bill of goods and I have no knowledge of him except what I get from the general reference, it would damage his credit.

Cross-examination by Mr. Devine:

Q. When did you first become acquainted with Hayes? Was it at the time this bill was purchased?

A. No, sir; I do not know as I can tell. I should say in the neighborhood of two or three years ago when I first became acquainted with him.

Q. What was the date when you first became acquainted with him?

A. I really do not know as I can tell.

Q. Was he in any business for himself?

A. I do not think he was.

Q. Was he connected with Perry Fuller or Perry Fuller & Co. at that time in any way?

A. I do not think he was. I never had any business transactions with him of any kind.

Q. Where did you know him at that time?

A. In our place of business.

Q. What was he doing in your place of business at that time?

A. Merely calling to see an acquaintance, Mr. Townsend, a friend of his, our salesman, and I was introduced to him, and I had no personal acquaintance with him beyond the introduction through Mr.
334 Townsend. I had no intimate acquaintance with him of any kind.

Q. When did you see him next after that?

A. My recollection is that he was in the store occasionally at intervals of some little time, some months, some three or four times, before we sold him this bill of goods. I do not know as I can tell the time.

Q. Did you have any conversation with him about his means prior to the time when he bought this bill of goods?

A. No, sir.

Q. Who first spoke to you about his buying this bill of goods?

A. He did.

Q. Did any person come with him?

A. I do not think there did the first time.

Q. Did Perry Fuller accompany him on any occasion?

A. He did.

Q. On which occasion?

A. He was there on two occasions.
Q. With him?
A. Yes, sir.
Q. And on which of those occasions was it that you agreed to sell him?
A. On the last occasion.
Q. What enquiries did you make as to his credit?
A. Mr. Belcher first talked with Mr. Hayes, and I do not know whether he talked with Mr. Fuller or not—my impression is that he did—about Mr. Hayes' responsibility.
Q. What was said as to Hayes' responsibility?
335 A. I do not really know what was said to him. I talked with Mr. Hayes myself afterwards about it, and also with Mr. Fuller.
Q. Was Hayes present at the same time when you talked?
A. He was in the room. He was not present with me and Mr. Fuller when we were talking about the matter.
Q. What was said to you as to Mr. Hayes' means?
A. My recollection is that Mr. Fuller said to me that Mr. Hayes was worth from 20 to 40 thousand dollars, and that he was perfectly good for any amount that he wanted to buy. We declined selling him in the first place—Mr. Belcher was absent at the time—and he told me that he could make the time very short.
Q. Who told you?
A. Mr. Hayes. He told me that he could make the time very short—25, 35, and 60 days' time—and Mr. Fuller thought there would be no doubt about him at that time, and that he would endorse the paper if we would sell him; that he had no hesitancy in doing it. Mr. Fuller's representations as to Mr. Hayes' responsibility, and with Mr. Fuller's endorsement, I thought it would be beyond question, and I consented to sell him without Mr. Belcher's knowing it, he being absent at that time.
Q. Did Hayes and Fuller say anything to you of Hayes' previous connections with Perry Fuller & Co.?
A. No, sir.
Q. What caused you to decline to sell Hayes at first?
A. One reason was that the goods were going away a good ways, and we had always been particular about sending goods so far,
336 without we had undoubted responsibility. That was the particular reason. Another reason was that, knowing that Mr. Fuller had been connected with some Government affairs, we did not want to be mixed up in the matter in any way, and did not know particularly how he stood, although we supposed him to be perfectly good.
Q. In what way did you connect Fuller with Hayes? What reason had you?
A. I had no reason for connecting them. I knew that Hayes had been in New Orleans with him.
Q. How did you know that?
A. Mr. Fuller told me.
Q. In what capacity had he been with Fuller in New Orleans?
A. As subordinate, I suppose.
Q. Did you ever sell goods to Hayes before that time?
A. No, sir; as near as I know.
Q. Had you before that time sold goods to Fuller or Perry Fuller & Co.?
A. Yes, sir; we had.

Q. How long had you been acquainted with Perry Fuller or Perry Fuller & Co. previous to that?

A. I should say two or 3 years.

Q. Was it not merely upon the statement and representation and recommendations of Perry Fuller that you sold that bill of goods to Hayes?

A. Not merely; it had an influence upon it. I supposed, from Mr. Hayes' representations of his responsibility, and Mr. Fuller's also, that Mr. Hayes was perfectly good. Our acquaintance with Hayes
337 was so limited that we did not feel disposed to sell him goods alone.

Q. Was any reason given by Perry Fuller for his offering to endorse for Hayes?

A. Yes, sir; he gave a reason.

Q. What reason did he give?

A. He gave as a reason that he wanted Hayes to succeed; that he had been with him some time; knew he was a good man, and knew he was responsible, and he was willing to assist him.

Q. You have here copies of the notes which you had?

A. Yes, sir.

Q. I see that these notes are payable at the office P. P. Elder & Co., Ottawa, Kansas. Was anything said to you as to whether Perry Fuller's son was connected with that firm?

A. Nothing said to me about it.

Q. Did you have any talk with Fuller or Hayes about the claims of the Government against Fuller?

A. No, sir.

Q. Who selected the goods that were bought?

A. Mr. Hayes.

Q. Did Fuller assist him in the selection?

A. Not at all.

Q. Of what did the goods consist?

A. Groceries; general assortment of groceries.

Q. Who acted as salesman in selling the goods for Hayes?

A. Mr. Townsend.

Q. You had no connection with the selling, except granting the credit?

338 A. Making the credit and closing the bill.

Q. Did you not personally supervise the selection of the goods?

A. Not at all.

Q. That was done by Mr. Townsend?

A. Yes, sir.

Q. Did Hayes or Fuller give you a reference to any firm in this city as to Hayes' means?

A. I do not think they did.

Q. They did not give you any reference to the firm of Buckley, Sheldon & Co.?

A. No, sir; I knew that they were selling them. I saw Mr. Buckley.

Q. Did he state anything to you about Hayes' means?

A. No, sir; he was rather short with me. He said that he had concluded to sell him goods; that he did not want to say anything about it, for anybody else to do it, on the grounds that every man should make his own credits.

Q. At that time did you regard Perry Fuller's endorsement as being good for anything?

A. I did, sir.

Q. Were you not aware at that time that attachments had been taken out against him and levied?

A. No, sir; I was not.

Q. Did he say anything to you about any attachments having been issued against his property?

A. No, sir.

Q. Against Perry Fuller's property?

A. That was what I understood you. No, sir; he did not.

Re-direct:

339 Q. Did Hayes make any statement to you at the time of this purchase about where he was going into business?

A. Yes, sir.

Q. Where did he say he was going into business?

A. In Kansas; in the Indian country.

Q. At that time did he state whether he was interested with any person in this business with him—in this undertaking?

A. He said there was no one interested with him.

Q. Did Hayes make any statement to you of his pecuniary ability?

A. No, sir he did not to me; I think he did to Mr. Belcher, but I am not positively sure.

Q. You think he did to Mr. Belcher?

A. Yes, sir.

Q. Isn't it customary, in selling goods the first time to a person, to ask for a reference, to make enquiries as to a person's character?

A. Yes, sir; always it is customary.

Q. How long had you known Fuller before you sold these goods to Mr. Hayes?

A. Known him about two or three years.

Q. You know this invoice of the purchase to be a correct copy of the invoice of goods sold to Mr. Hayes?

A. Yes.

Re-cross:

Q. Was this statement made by Hayes to your partner, Mr. Belcher, taken down in writing?

A. No, sir; it was not.

340 Q. You will annex copies of the notes to your deposition, won't you?

A. Yes, sir.

Re-direct:

Q. At the time this sale was made, did you make enquiries of Perry Fuller whether he was interested with Mr. Hayes?

A. I did.

Q. What was his answer?

A. That he was not interested at all.

Re-cross:

Q. What induced you to make that enquiry?

A. Because of their previous connection, and I thought he might have an interest.

Q. You supposed that he might have an interest?

A. I thought he might.

(Signed) W'M G. DICKINSON.

And attached to the foregoing deposition are the following exhibits,

each of which is marked Exhibit No. 6, and are in the words and figures following, to wit:

(Copy.)

$1,200 55.] NEW YORK, *Aug. 27th*, 1869.

Sixty days after date I promise to pay, to the order of Perry Fuller, esq., twelve hundred & $\frac{55}{100}$ dollars, at the office of Mess. P. P. Elder & Co., Ottawa, Ka's, value received, with current rate of exchange on New York.

(Signed) WILLIAM HAYES.

No. . Due Oct. 29.

341 W'M G. DICKINSON.

(Endorsed:) (Sig'd) PERRY FULLER.

$751 60.] NEW YORK, *Aug. 27th*, 1869.

Twenty days after date I promise to pay, to the order of Perry Fuller, esq., seven hundred fifty-one $\frac{60}{100}$ dollars, at the office of Mess. P. P. Elder & Co., Ottawa, Ka's, value received, with current rate of exchange on New York.

(Signed) WILLIAM HAYES.

No. . Due Sep. 19.

W'M G. DICKINSON.

(Endorsed:) (Sig'd) PERRY FULLER.

$750 00.] NEW YORK, *Aug 27th*, 1869.

Thirty-five days after date I promise to pay, to the order of Perry Fuller, esq., seven hundred & fifty dollars, at the office of Mess. P. P. Elder & Co., Ottawa, Ka's, value received, with current rate of exchange on New York.

(Signed) WILLIAM HAYES.

No. . Due Oct. 14.

W'M G. DICKINSON.

(Endorsed:) (Sig'd) PERRY FULLER.

NEW YORK, *August 27th*, 1870.

Mr. W. Hayes, Ottawa, Kansas, bought of H. W. Belcher & Co., grocers, 41 and 43 Warren street.

Terms, .

☞ In shipping goods we always take a receipt for them in good order, after which we are not responsible for breakage, leakage, or damage.

342 8 bags, 2.40, Rio coffee (J) ł 7		1,268	21	268	68
8 " 2.40 " (S) ł 10		1,295	22½c	293	78
4 " 1.20 " 2 ł 2		649	23½c	153	72
5 bbls. sugar ł 249; 278—19, 255—20, 268—21, 260—18, 270—21	1,331—99	1,232	11½c	141	68
5 " " ł 272; 256—18, 248—20, 251—16, 279—19, 268—21	1,302—94	1,208	12½	154	02
3 " " m. S. H. & Co., ł 265; 280—23, 275—21, 271—18	826—62	764	13½	103	14
2 " A " ł 247; 253—22, 258—21	511—43	468	15½	71	37
2 " cr'd " 206-209	415		16½	67	44
1 "pow'd" ł 221; 269—23		246	16½	39	79
2 " ℗ " ł 216; 265—18, 273—18	538—36	502	14½	72	79
8 caddies tobacco, Golden Prize		153	75	114	75
8 " " ł 3		177	65	115	05

2 h'lf box's " [S] 12c; 79—16, 78—15	157—31	126	65	81 90
2 caddies Rosebud twist, straps, 20c	19-20	39	80	31 40
1 " Triumphs P. P. navy		22	70	15 40
½ Geo. Solace chewing			10 80	5 40
½ " Sunny Side "			10 80	5 40
50 lbs. sm'k'g tob., ¼ & ½ lbs. (no brand)			45	22 50
25 " " " Lima, ½, ¼, & ½			75	18 75
3 h'lf c'd'es Imp. tea, G. S. ½ 85; 75—14, 74—14, 74—14	226—42	184	1 25	230 00
1 " " " Dil. ½ 74; 14—16	58		1 55	89 90
10 caddies " G. S. ½ 32 10 E	100		1 30	130 00
343 10 b'x lay. ra'sins			3 20	32 40
3 " su. ground pepper 12 E		36	28	10 80
3 " " " 12 E		36	35	12 60
2 " gr'd ginger 30 E			25	7 50
W'M G. DICKINSON.				
Strap 40c				40
2 b'x ground spice 12 E	24		35	8 40
2 b'ls., 80, rice, Car. ½ 24; 245—20, 253—22	498—42	456	9½	43 32
2 b'gs " ½ 23	495—8	487	8½	41 39
1 " pepper		95	32½	30 88
2 b'x T. D. pipes, 3 gr. E		6	40	2 40
2 bbls. amber syrup; 45½, 44½	89—1	88	60	52 80
2 " B. H. " ½ 75; 44½, 44½	89		80	71 20
1, 000 Solar segars				20 00
¼ cad'y P. G. tea. cing 203	66—14	53	1 35	71 55
¼ M Part. segars			75	37 50
Cartage 6 00, 2 cases, 1 50				7 50
				2, 677 76
Add interest				24 39
				$2, 702 15

W'M G. DICKINSON.

Also, the deposition of George Raymond.

The deposition of George Raymond, taken at the city of New York, on the 15th day of February, 1870, before Hanson C. Gibson, a notary public in and for the county of New York and State of New York.

344 GEORGE RAYMOND, examined by Mr. Doolittle:

Q. What is your occupation?
A. Book-keeper.
Q. For whom?
A. Langley, Satterlee, Blackwell & Co.
Q. How long have you been in their employ?
A. More than six years.
Q. Then you were in their employ when Hayes bought a bill of goods of them last year?
A. Yes, sir.
Q. Have you furnished a copy of their bill?
A. Yes, sir; I have given you a copy.
Q. Were you there at the time Hayes purchased these goods?
A. Yes, sir.
Q. Of which this invoice has been furnished?
A. Yes, sir.
Q. Who purchased those goods, & to whom was the credit given?
A. The goods were charged to William Hayes, and shipped, according to directions, to Ottawa, Kansas.
Q. Are these (looking at notes) copies of the notes that were given?
A. They are.
Q. Was there credit given to any one else but W'm Hayes?
A. No one but W'm Hayes. His account was credited with the notes and charged with the goods.

Cross-examined by Mr. Devine:

345 Q. Who actually made the bargain with Hayes for the sale of these goods—who was the salesman?

A. Mr. Langley.

Q. Were you present at the time?

A. When he bought the goods?

Q. Yes.

A. I was in my office. I was not with him.

Q. You don't know, of your own knowledge, anything about what took place between Mr. Hayes & Mr. Langley at the time the bargain was made for the purchase of the goods, do you?

A. I can't say that I did hear any conversation.

Q. All you know about the sale or the purchase of the goods is what you learned from Mr. Langley or from Mr. Hayes. Isn't that so?

A. And from what I learned from my books.

Q. Had you ever known Hayes before this?

A. No, sir.

Q. Was this the first occasion?

A. Yes, sir. I never saw him before that I know of.

Q. Your firm had never sold Hayes goods before, so far as you know?

A. Not to my knowledge.

Q. And had had no dealings with him?

A. Not that I know of. They might have had, but I am inclined to think not.

Q. Who introduced him to your house?

A. I can't say.

346 Q. Were any inquiries made of him as to his means by anybody in your house; that is, to your knowledge?

A. No, sir; I can't say that there was.

Q. Are you acquainted with Perry Fuller?

A. Not what you may call acquainted with him. I know him when I see him, but he don't know me.

Q. Did he accompany Hayes to the store while he was making these purchases?

A. At the time the purchase was made I don't know whether they were together or not.

Q. Did you see them at any time together at the store?

A. Yes, sir.

Q. What were they doing there then?

A. In the office when I saw them.

Q. And there together?

A. Yes, sir; I think they were there together.

Q. How often have you seen them there?

A. I can't say how many times; I could not designate the number of times.

Q. Aside from the entries on your books, you have no personal knowledge as to whether those goods were sold to Hayes or to Perry Fuller, have you?

A. My idea was that they were sold to Hayes. That was my idea. I always had that impression.

Q. But, putting out of view the entries on your books and your impression, have you any personal knowledge that those goods were sold to Hayes any more than to Perry Fuller?

A. It was Hayes that was brought in question right along.

347 Q. The business was done in Hayes' name.

A. Yes, sir. It was just like any other account on my ledger.

I would suppose to whom the goods were charged was the party who bought the goods, naturally.

Q. But, aside from that, you have no knowledge about it?

A. No, sir.

Q. If you have any knowledge aside from that, I would like to know it.

A. Do you mean in reference to who bought the goods?

Q. Yes, aside from the fact that you have just stated that the charges passed through your books to Hayes?

A. The supposition was—I have been laboring under that view—that Hayes was the man that bought the goods and the man to whom the goods were to be charged.

Q. I am asking you if you have any knowledge of your own, aside from the entries on your books and what you learned from Mr. Langley?

A. I have not learned anything particular from him.

Q. Aside from the entries on your books, have you any knowledge as to Hayes buying those goods himself?

A. Well, I had a knowledge from the books, seeing him in the store, & seeing him in our stock.

Q. You saw Perry Fuller, also, in the store, did you not?

A. Yes, sir.

Q. What you have stated as to your reasons for believing that W'm Hayes was the purchaser of these goods is based simply upon the fact of seeing him in the store and the charges for the goods being
348 made to him upon your books. Isn't that so?

Mr. DOOLITTLE. I submit that you must not assume any question, any you assume that the witness has said "that is all," when he has said other things. There is no more dangerous way of exam'ing a witness to say that he said so and so when he has not.

(Defendant's counsel objects to any suggestion being made by the plaintiff's counsel to the witness on cross-examination.)

A. I don't know of anything else.

Q. Your house received notes of Hayes, endorsed by Perry Fuller, for these goods, did they not?

A. Yes, sir.

Q. And these (holding the notes) are copies of the notes?

A. Yes, sir.

Q. Do you know how it was that Perry Fuller came to be endorser on these notes?

A. I don't know, unless it is by agreement with those in the concern.

Q. Do you know who procured Perry Fuller's endorsement on those notes?

A. No, sir; I can't say.

Q. Did you see Fuller write his name on the notes?

A. I think I was present at the time. I drew the notes up.

Q. Who wrote the notes?

A. I drew them up. I am almost sure I drew them up.

Q. You drew them up yourself, and who were present at the
349 time?

A. W'm Hayes was present.

Q. Was Perry Fuller?

A. I think Perry Fuller was present.

Q. And the notes were signed by Hayes and endorsed by Fuller at the same time in your store?

A. Well, whether it was at the same time or not I won't say; it might have been an hour of two afterwards, for all that I know; that is

something I have not kept very definitely in my mind, because I did not know at that time that there would be any necessity.

Q. Did you hear any conversation between Fuller and Hayes?

A. No, sir; not that I remember.

Q. Did you hear any conversation between Hayes and any member of your firm?

A. There might have been a conversation that I heard, but I have nothing that is fresh in my mine now.

Q. Have you any recollection at all of any conversation between Hayes and any of the members of your firm?

A. Nothing that I remember at present.

Q. Do you recollect any conversation between Perry Fuller and any member of your firm?

A. No, sir; I produce copies of the notes taken by our firm for the invoices of these goods, and I annex the same to my deposition.

Re-direct:

350 Q. Did you see Hayes there while he was purchasing these goods; did you see him select and purchase them there?

A. I don't remember of seeing him selecting. I saw him in the store, as I would naturally see any customer, on or about the time that the goods were sold to him.

Q. Did you know of Perry Fuller's having anything to do with the purchase of these goods in any way, shape, or manner, of your own knowledge?

A. No, sir.

Q. You can't say whether he endorsed the notes at that time—the time they were made by Hayes or afterwards?

A. I think it was the same day, but I am not certain whether it was exactly at the time or a little while afterwards—I can't remember at present.

Q. Did you hear Mr. Langley or any other member of the firm ask Hayes to procure Fuller to endorse for him or ask him to endorse?

A. No, sir; I don't think I did.

Q. You didn't know, of your own knowledge, of Fuller's having any connection with these goods whatever, did you?

A. All I knew about that was that he endorsed the notes.

Q. That is all you knew of the connection of Fuller?

A. Yes, sir.

GEORGE RAYMOND.

And attached the foregoing deposition are the following exhibits, each marked "Exhibit No. 7," and are in the words and figures following, to wit:

351 [Stamp, 40c.]

$753 63.] NEW YORK, *Aug.* 24, 1869.

Four months after date I promise to pay, to the order of Perry Fuller, seven hundred & fifty three $\frac{63}{100}$ dollars, at office P. P. Elder & Co., Ottawa, Kansas, with exchange on New York, value received.

WILLIAM HAYES.

No. 262. Due Dec. 27, '69.

Copy.

GEORGE RAYMOND.

(Endorsed:) PERRY FULLER.

[Stamp, 40c.]

$753 63.] NEW YORK, *Aug.* 24, 1869.

Three months after date I promise to pay, to the order of Perry Fuller, seven hundred & fifty-three $\frac{63}{100}$ dollars, at office of P. P. Elder & Co., Ottawa, Kansas, with exchange on New York, value received.

WILLIAM HAYES.

No. 261. Due Nov. 27, '69.

Copy.
GEO. RAYMOND.

(Endorsed:) PERRY FULLER.

[Stamp, 40c.]

$753 64.] NEW YORK, *Aug.* 24, 1869.

Five months after date I promise to pay, to the order of Perry Fuller, seven hundred & fifty-three $\frac{64}{100}$ dollars, at office P. P. Elder & Co., Ottawa, Ka's, with exchange on New York, value received.

WILLIAM HAYES.

No. 263. Due Jan'y 27, '70.

Copy.
GEORGE RAYMOND.

(Endorsed:) PERRY FULLER.

WASHINGTON E. LANGLEY. GREGORY SATTERLEE. TUNIS H. BLACKWELL. ERASTUS H. FOSTER.

352 NEW YORK, *August*, 1869.

Mr. W'm Hayes, Ottawa, Franklin Co., Kansas, bought of Langley, Satterlee, Blackwell & Co., importers, manufacturers, and jobbers of hats, caps, fur & straw goods, ladies' felt and straw jockeys, umbrellas, parasols, &c., 379 Broadway, cor. White street.

Duplicate.] Terms, 4 mo's. [Hats by the case or dozen.

2181	2	doz. men's bl'k fur,	Hyde Park	28 50	57	
2599	1	" " "	French		45	
914	2	" " "	Planters'	30	60	
893	2	" " "	French	12	24	
895	1	" " "			19	50
894	2	" " "		15	30	
2169	1	" " "			22	50
2581	1	" " "			28	50
2179	1	" " "			39	
892	1	" " "	Alpine		18	
884	1	" " "			24	
940	½	" " "	Brush	42	21	
939	½	" " "	Brown	42	21	
896	½	" " "	fur	22 30	11	25
2468	1	" " "	Planter		30	
2377	½	" " "		39	19	50
714	½	" " "	Nutria	33	16	50
2555	1	" "	Pear Cass		21	
2676	10–12	" "	French	28 50	23	75
353 2359	1	" "			16	50
2691	1	" "	drab		27	
869	1	" "	mo		28	50
933	½	" "	brown Sinbad	28 50	14	25
934	½	" "	black Sinbad	28 50	14	24
912	½	" "	mole		22	50
Job. 795	1½	" "	Gen. Prim	16	24	
904	2	" "	mole, Alpine	16	32	
Job. 805	1½	" "		15	25	
878	3	" "	Planter	15	45	
783	4	" "		9	36	
874	3	" "		15	45	
819	2	" "		9 50	19	
2146	2	" "	Hungarian	15	30	
907	1	" "			16	50
2154	1	" "	mole		12	
			GEORGE RAYMOND.			
		Forward			945	
2573	6	doz. men's black wool		4 50	27	
833	5	" "		6	30	
876	1	" "			11	50
2153	1	" "			11	50
2344	1	" "			12	
2150	1	" "			12	

2564	3	"	"	Nutria, mixed	8 50	25 50
750	3	"	"	"	8 50	25 50
2230	1	"	"	" Planters'		15
2465	1	"	"	bro. "		15
354 2333	1	"	"	" French		15
756	1	"	"	" Alpine		18
2428	1	"	"	" French		13 50
110, 64, 63	1½	"		boys' ass. velvet & cass. hats	13 50	20 25
789	2	"		men's blue Velocipedes	18	36
844	1	"		boys' "		12
929	1	"		drab, mixed		15
2615	2	"		mixed Stanley	7 50	15
2623	2	"		" "	5 75	11 50
2628	1	"		pearl, with plume		9
922	3	"		Nutria	6	18
2412	1½	"		bro. Medon	9	13 50
921	1	"		wine Bristol		12
899	1	"		French		10 50
937	1	"		black		10 50
926	1	"	"	" Bristol		12
911	1	"	"	" Reval		12
2437	1	"		"		10 50
708	1	"		boys' bl'k Clarence		9
2574	4	"		wool	4	16
2616	3	"			5 50	16 00
2689	2	"			9	18
2491	2	"			7 50	15
2688	2	"			10 50	21
2551	2	"			7 50	15
902	1	"		Alpine		11 50
2415	1	"		plume		7 50
1621	1	"				10 50
355 11	1	"		men's buck. gauntlet		22 50
124	1	"				28 50
36	3	"		"	8	24
35	3	"		" white "	8	24
14	2	"		" bl'k "	15	30
16	1 11-12	"		kid gloves	15	28 75
				GEORGE RAYMOND.		
				Forward		1,692
7	3	doz.		men's gloves	9	27
30	1	"		buck "		18
121	1	"		"		9
144	1	"		driving		9
9	1	"		dog-skin		15
15	1	"		fur, wrist		16 50
34	1	"		gauntlets		12
19	1	"		boys' gauntlet		7
37	1	"				7
38	2	"		l'd's kid, otter, wrist	21	42
½		"		12-in. duck satchels	22 50	11 25
4 ½		"		9 " Magenta	21	10 50
4 ½		"		12 " "	30	15
2	3	"		le'ther pells, 16-in	6	18
	3			" " 18 " pocket	9	27
	3			" " 20 " "	10	30
	3			" " 16 " "	8	24
2	6			18-in. Boston valise	2 50	15
2	6			20 " "	2 75	16 50
	6			18 " patent	3	18
356	3 ½	doz.		Gothic bags	9	4 50
	5 ½	"		"	10	5
*	½	"		silk hats	60	30
***	½	"		"	84	42
				Scuttles & case		2 50
6	3			G. P. tray trunks, bonnet box	6	18
7	3			" " 30-in. "	5	15
	3			O. G. le'ther, brass band	6	18
2	3			G. P., folio, 30 in	3 75	11 25
3	12			umbrellas	1	12
0	12			"	60	7 20
				Sacking, 12 trunks, 21 cases, c't'ge & strap		19 50
						2,224 70
				AUG. 25, '69.		
				1 set mink, collar & muff		35
				Stamps on notes		1 20
				SEPT. 6.		
				1 hat (deed) cass	2 50	
				1 cap	1	
				1 silk hat	6	
						9 50
						$2,270 40

GEORGE RAYMOND.

Testimony of Louis Holly.

LOUIS HOLLY, called for plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. Broadhead:

Question. What business were you in in the year 1869?

Answer. I was deputy sheriff of St. Louis County.

357 Q. Under John McNeil?

A. Yes, sir.

Q. Do you know anything about the sale of goods attached in the case of the First National Bank against Perry Fuller? (Handing witness a paper:)

A. Yes, sir.

Q. Look at that claim of Mr. Hayes.

A. I recollect of having seen this at that time.

The COURT, (to Mr. Broadhead.) What do you propose to prove by this witness?

Mr. BROADHEAD. The seizure and sale of the goods and the delivery to other persons; that the goods were taken under attachment, unless the gentlemen admit it.

Mr. HENDERSON. No, sir; we will not admit it; we do not know what goods he refers to; we will admit the mere seizure, if that is all.

By Mr. BROADHEAD. Q. Look at the claim of Mr. Hayes, and see what disposition was made of the goods embraced in that claim.

A. I can't say.

Q. Do you know of that claim being made?

A. Yes, sir.

Q. Do you know whether the goods were in the hands of the sheriff at the time the claim was made—the goods mentioned in that claim?

A. I don't know. There may have been another lot seized some place else having the same articles; there might have been duplicates of these articles seized somewhere else.

358 Q. Do you know anything of the attachment suit?

A. I know about some property being attached as the goods of Perry Fuller under this attachment.

Q. Do you know what goods were seized and sold; can you tell by reference to the sale-books?

A. I can, sir.

Q. What book is that? (Handing book to witness.)

A. This is the sheriff's sales-book.

Q. Who kept that book?

A. Different deputies. At one time I kept it; another time Mr. Block.

Q. Who kept it at the time of this attachment suit?

A. Mr. Block.

Q. Who made the entries that were made in that book of those sales?

A. Mr. Block.

The COURT. Is not there a return on this attachment that those goods were seized and sold?

Mr. BROADHEAD. Yes, sir.

Mr. HENDERSON. We do not deny that we seized the goods named in the bond.

The COURT. You are confined obviously to the bond, no matter how much more you seized. Those sureties are only liable for that; that is all they undertake to show, and you can show the value of them.

	2564	3	"	"	Nutria, mixed	8 50	25 50
	750	3	"	"	"	8 50	25 50
	2230	1	"	"	" Planters'		15
	2465	1	"	"	bro. "		15
354	2333	1	"	"	" French		15
	756	1	"	"	" Alpine		18
	2428	1	"	"	" French		13 50
110, 64, 63		1½	"		boys' ass. velvet & cass. hats	13 50	20 25
	789	2	"		men's blue Velocipedes	18	36
	844	1	"		boys' "		12
	929	1	"		drab, mixed		15
	2615	2	"	"	mixed Stanley	7 50	15
	2623	2	"	"	" "	5 75	11 50
	2628	1	"	"	pearl, with plume		9
	922	3	"	"	Nutria	6	18
	2412	1½	"	"	bro. Medon	9	13 50
	921	1	"	"	wine Bristol		12
	899	1	"	"	French		10 50
	937	1	"	"	black		10 50
	926	1	"	"	" Bristol		12
	911	1	"	"	" Reval		12
	2437	1	"		"		10 50
	708	1	"		boys' bl'k Clarence		9
	2574	4	"		wool	4	16
	2616	3	"			5 50	16 00
	2689	2	"			9	18
	2491	2	"			7 50	15
	2688	2	"			10 50	21
	2551	2	"			7 50	15
	902	1	"		Alpine		11 50
	2415	1	"		plume		7 50
	1621	1	"				10 50
355	11	1	"		men's buck. gauntlet		22 50
	124	1	"				28 50
	36	3	"		"	8	24
	35	3	"	"	white "	8	24
	14	2	"	"	bl'k "	15	30
	16	1	11-12	"	kid gloves	15	28 75
					GEORGE RAYMOND.		
					Forward		1, 692
	7	3	doz.		men's gloves	9	27
	30	1	"		buck "		18
	121	1	"		"		9
	144	1	"		driving		9
	9	1	"		dog-skin		15
	15	1	"		fur, wrist		16 50
	34	1	"		gauntlets		12
	19	1	"		boys' gauntlet		7
	37	1	"				7
	38	2	"		l'd's kid, otter, wrist	21	42
		½	"		12-in. duck satchels	22 50	11 25
	4	½	"		9 " Magenta	21	10 50
	4	½	"		12 " "	30	15
	2	3	"		le'ther pells, 16-in	6	18
		3			" " 18 " pocket	9	27
		3			" " 20 " "	10	30
		3			" " 16 " "	8	24
	2	6			18-in. Boston valise	2 50	15
	2	6			20 " "	2 75	16 50
		6			18 " patent	3	18
356	3	½	doz.		Gothic bags	9	4 50
	5	½	"		"	10	5
	*	½	"		silk hats	60	30
	***	½	"		"	84	42
					Scuttles & case		2 50
	6	3			G. P. tray trunks, bonnet box	6	18
	7	3			" 30-in. "	5	15
		3			O. G. le'ther, brass band	6	18
	2	3			G. P., folio, 30 in	3 75	11 25
	3	12			umbrellas	1	12
	0	12			"	60	7 20
					Sacking, 12 trunks, 21 cases, c't'ge & strap		19 50
							2, 224 70
					AUG. 25, '69.		
					1 set mink, collar & muff		35
					Stamps on notes		1 20
					SEPT. 6.		
					1 hat (deed) cass	2 50	
					1 cap	1	
					1 silk hat	6	
							9 50
							$2, 270 40

GEORGE RAYMOND.

Testimony of Louis Holly.

LOUIS HOLLY, called for plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. Broadhead:

Question. What business were you in in the year 1869?

Answer. I was deputy sheriff of St. Louis County.

357 Q. Under John McNeil?

A. Yes, sir.

Q. Do you know anything about the sale of goods attached in the case of the First National Bank against Perry Fuller? (Handing witness a paper:)

A. Yes, sir.

Q. Look at that claim of Mr. Hayes.

A. I recollect of having seen this at that time.

The COURT, (to Mr. Broadhead.) What do you propose to prove by this witness?

Mr. BROADHEAD. The seizure and sale of the goods and the delivery to other persons; that the goods were taken under attachment, unless the gentlemen admit it.

Mr. HENDERSON. No, sir; we will not admit it; we do not know what goods he refers to; we will admit the mere seizure, if that is all.

By Mr. BROADHEAD. Q. Look at the claim of Mr. Hayes, and see what disposition was made of the goods embraced in that claim.

A. I can't say.

Q. Do you know of that claim being made?

A. Yes, sir.

Q. Do you know whether the goods were in the hands of the sheriff at the time the claim was made—the goods mentioned in that claim?

A. I don't know. There may have been another lot seized some place else having the same articles; there might have been duplicates of these articles seized somewhere else.

358 Q. Do you know anything of the attachment suit?

A. I know about some property being attached as the goods of Perry Fuller under this attachment.

Q. Do you know what goods were seized and sold; can you tell by reference to the sale-books?

A. I can, sir.

Q. What book is that? (Handing book to witness.)

A. This is the sheriff's sales-book.

Q. Who kept that book?

A. Different deputies. At one time I kept it; another time Mr. Block.

Q. Who kept it at the time of this attachment suit?

A. Mr. Block.

Q. Who made the entries that were made in that book of those sales?

A. Mr. Block.

The COURT. Is not there a return on this attachment that those goods were seized and sold?

Mr. BROADHEAD. Yes, sir.

Mr. HENDERSON. We do not deny that we seized the goods named in the bond.

The COURT. You are confined obviously to the bond, no matter how much more you seized. Those sureties are only liable for that; that is all they undertake to show, and you can show the value of them.

By Mr. BROADHEAD. Q. What did the sheriff do with those goods?
A. They were advertised and sold.

359 Cross-examination by Mr. Henderson, counsel for the defendants:
Q. Were they sold at public sale?
A. Yes, sir.
Q. What did they bring?
A. $15,807 34.
Q. Who were the purchasers? Have you got the names of the purchasers there? Are they very numerous, or did the wholesale merchants buy them here?
A. I have got them all here: Mr. Haggerty, Barr, Duncan & Company.
Q. Give us the amounts as you call the names off.
A. Mr. Livingstone, Mr. Wall, Mr. Jacobus, Mr. Koenigscrimer, Mr. Newton of Kansas, and a great many others whose names I can't recollect; I can't find them here.

Plaintiff closes.

360

361 Defendant's testimony was then introduced, as follows:

Mr. Dillon read the deposition of Clifton Hellen:

The deposition of Clifton Hellen, taken before Moses B. McClay, a notary public in and for the county and State of New York, at the city of New York, on the 11th day of August, 1870.

Deposition of Clifton Hellen.

CLIFTON HELLEN, a witness for defendants, being duly sworn & examined, testifies as follows:
I reside in New York City; I have never given up my residence here, but have been, and shall be, here on business; I know the plaintiff, William Hayes; I know Perry Fuller. I have been acquainted with Hayes since about October, 1868; [I have known him, by reputation, for the last five years.]
(Objected to, this part in brackets.)
When I became acquainted with Hayes, in October, 1868, he was at New Orleans, in the custom-house, on a salary; he was the confidential friend of Perry Fuller, who was the collector there.
Q. Did Hayes, at any time, say anything to you as to his relations with Perry Fuller; if yea, when, and what did he say?
(Objected to; too broad; must relate to subject-matter of suit; too indefinite as to time. Exception reserved.)
A. I left New Orleans on evening of November 13th or 14th, 1868. Hayes and I had a conversation the evening I left.
(Objected to conversation as immaterial.)
362 He stated that Fuller had brought him down there to make some money for him, Fuller, (objected to,) and asked me to telegraph him if I succeeded in my mission to Washington, so that he could operate on the information. I told him I had got a letter from my wife, saying my child was sick, and I'd got a leave of absence for 14 days; I should take occasion while there to try and get the position of deputy surveyor; and then he asked me to telegraph if I succeeded. I did not telegraph him. That is all that is material that took place.

(Plaintiff's counsel objects to answer, and moves to strike it out, as immaterial and irrelevant and incompetent. Motion reserved for trial.)

I was not then acquainted with the circumstances of Hayes, except I [knew that he was borrowing money from DeWolf.]

(Objected to.)

Q. When and where did you next see Hayes?

A. I can't say when precisely, but it was about the time when a telegram was sent by Fuller to him to come here. He came here in June, 1869; he came about a suit which Fuller had against the firm of Stettauer & Co.; he was Fuller's book-keeper—the book-keeper of his firm. We—that is, I and Major Fuller—waited for him, at the St. Nicholas Hotel, till he got there. I was present with them for many days in succession while Hayes was here on that occasion.

363 Q. Please state all that you now remember of the conversation, if any, which took place during that period, at which Hayes, Fuller, and yourself were present.

(Objected to as too broad. Objection to anything relating to Stettauer matters, and to anything except what relates to subject-matter of this suit; question must point to the subject-matter of this suit; and objects to any declarations of Fuller.)

A. We had conversations every five minutes for months; that is, while he was in town. Mr. Hayes was asked the question (Mr. DeWolf was present at this conversation) to make out another statement of the account of Stettauer & Co., as he had mislaid one of the papers, and he did make out a statement of the account of Stettauer & Co. I remember a conversation which occur'ed at Central Park Gardens about the last of August. Mr. Hayes and myself were sitting at a table; Mr. Nelson and Mrs. Hayes were walking about the grounds, and likewise Perry Fuller. I had written a letter a day or two before to Fuller, [asking him to send me some money he owed me.]

(Objected to.)

Hayes said, "Hellen, I wouldn't press Fuller for that money now; he is buying goods and is hard pressed. He will pay you more than your demand when he is able to do so." After a while Fuller came and sat down with us, and Fuller said, Hayes, myself, and Fuller being present, "Hellen, I'm buying goods now, and am not able to pay

364 you." Fuller said that he'd just got a message from the hotel that two detectives had come from Washington; that Tom, the boy, had brought a message that two men who he supposed were detectives had been enquiring for him at the hotel. (Objected to.) I said, "Major let me go down, and I'll send up word if they are detectives." He said no, he'd go down himself. Hayes, Mrs. Hayes, Nelson, and myself afterwards came on in the cars. This interview took place in August, 1869. I can't fix the date; it must have been between the 14th of August and the first of September, 1869; I fix the 14th because it was after I had written him a letter for this money. There was a conversation before this between Fuller and myself. Hayes was present, but don't think he said a word. Fuller said, "Clif., I wish you'd been with me to-day, I'd have gotten you a suit of clothes; I have been buying clothing to-day, and got a suit given Hayes, and could have gotten one given you." (Objected to.) Hayes didn't say anything during this conversation. He didn't say anything but that.

Q. State any other conversation or interview between yourself and Fuller and Hayes during that period.

(Objected to, as too broad, and unless it relates to subject-matter of this suit.)

A. Fuller gave me a draft for $100 on Clinton Wheeler, of Buckley, Sheldon & Co. (Objected to; not responsive.) I went to present it about 10 a. m., at the office of Buckley, Sheldon & Co.; there I found Fuller and Hayes. Hayes told Fuller he'd effected an insurance on the goods at a certain rate—the goods shipped to St. Louis by the
365 White line. Fuller got angry; said he paid too much; he'd never paid so much, and told him to go and have it corrected, if possible. Fuller took the check, got the money from the cashier, and paid me the $100, and they left. They were still talking about this insurance when I left, *this insurance when I left.* This conversation took place on or about the 28th day of August, 1869, within one or two days of that date. I fix the date because I used the money to pay my wife's board, and I think she left on the 29th.

Q. On this occasion, when Fuller spoke about the suit of clothes, did he say anything about his having been buying goods?

(Objected to, as already answered.)

A. He said he was buying clothing, and had got a suit for Hayes, and was sorry I wasn't with him, and he'd get me a suit. He didn't say where he had been buying the clothing.

Q. At any of those conversations was anything said as to where the goods purchased by Fuller were to be sent?

(Objected to.)

A. No, sir; not at either of those I have repeated. Conversations have occurred between me and Fuller when Hayes was not present, as to where said goods were to be sent.

Q. State what, if anything, was said between you and Fuller.

(Objected to, unless Hayes was present.)

A. Nothing as to those goods. The conversations as to where goods were to be sent occurred long before those goods were bought, barring, of course, what Hayes said to Fuller at Buckley, Sheldon & Co.'s
366 about the goods being sent to St. Louis by the "White Line," and the insurance.

Q. Did you, at any time, have any conversation with Fuller as to the sending of goods to Ottawa, in Kansas, or to any place in Kansas?

(Objected to, unless Hayes present.)

A. The name of Ottawa was never used, but the name Kansas—the State of Kansas—was mentioned. Fuller told me that as soon as his matter with Stettauer & Co. was settled—this was early in July or last of June, 1869—he was going to take a stock of goods to New Orleans. I told him he was in bad repute in New Orleans; that I'd staid there after he left and heard remarks about him, and I advised him not to go. About a week afterwards he told me he had changed his mind, and would take goods to Kansas. That was in June, or early in July, 1869.

(Objected to.)

Q. Did Fuller, in June or July, 1869, say anything to you as to what he intended to do with any money or securities he might get out of Stettauer & Co?

(Objected to, and Hayes not present.)

A. I can't refer to any particulrr conversation; that is, I can't give the date. He told me he was going to put the money into goods, except $5,500, which was going to his wife. I can't say that Hayes was ever present at any of the conversations with Fuller as to what he intended to do with the money he might collect from Stettauer & Co., though I have no doubt in my mind he was; but I can't fix any date and say that he was. I don't swear that he was present.

367 Q. Did you, at any time in June, July, or August, 1869, have

any conversation with Hayes, or with Fuller when Hayes was present, as to Hayes going to Kansas?

A. Yes, in August, with Hayes himself. He merely said, in the presence of his wife, that they were going to Kansas in a week or two. Fuller was not present. I called on Mrs. Hayes one morning on my way down town. It was towards the last of August. It was after the meeting at the Central Park Gardens above mentioned.

Q. Did Fuller, at any time in June, July, or August, 1869, say anything to you on the subject of his having commenced a suit or got an attachment against Stettauer & Co. in the name of Hayes?

(Objected to.)

A. Yes, sir; I don't remember Fuller said anything particularly about it. That was the conversation I was going to tell you occurred up in Mr. Doolittel's office.

Q Please state that conversation.

(Objected to.)

A. He was advised by one of his lawyers.

Q. What was he advised?

(Objected to. Not responsive and not material.)

A. That if he feared (this is what Fuller told me, I want you to understand) the Government would attach this property in the hands of Stettauer, or if he feared that persons holding those outstanding drafts, such as Levinson, Perkins & Co., or Andrew Dold, would attack it, that it would be better for Hayes, who had a sort of claim
368 for $23,000 against Perry Fuller & Co., to get the first attachment; and I think a lawyer named Simpson, or some such name, was employed to sue out the attachment, and it was got.

Q. Was Hayes present at that conversation?

A. Yes.

Q. Did he take part in it?

A. I don't remember his saying anything, but he was within hearing during the conversation. Mr. Nelson was also present. That conversation took place the day the attachment was got out, I think, in July, 1869. A day or two after that Hayes had to go back home, and he left a power of attorney to his lawyer to withdraw the attachment—with Mr. Nelson.

(Objected to. Power of attorney must be produced.)

Q. Did any conversation take place in reference to that power of attorney at or before the time when it was so left with Mr. Nelson.

(Objected to.)

A. Conversations occurred about it. But as to what I said, or Mr. Hayes said, or Fuller said, or Mr. Fant said, I can't remember. We were all together in Fuller's employ. The substance was that, if Stettauer & Co. concluded to pay Fuller, the attachment might be withdrawn, in order that Fant might receive for him the money, as he had a power of attorney from Mrs. Fuller, and also had authority from Fuller.

Q. Was there any conversation in reference to the claim of Hayes against Perry Fuller & Co., on which the attachment was to be taken out?

(Objected to. Immaterial and irrelevant.)

369 A. I didn't hear that matter discussed. Heard it was a claim on some bond.

Q. Did you afterwards have any conversation with Hayes, or with Fuller when Hayes was present, in reference to how that suit against Stettauer & Co. was settled? If so, state it.

(Objected to.)

A. I never asked the question. I severed my connection with Perry Fuller & Co. before it was settled. It was in course of settlement when I left. I think it was on or about the 14th of August, 1869, when my connection with them was severed.

Q. Did you at any time have any conversation or conversations with Fuller, at which Hayes was present, in reference to any apprehended seizure of Fuller's property by the United States Government?

(Objected to.)

A. Only as I stated before, and I don't know that Hayes was present at that.

Q. Please state all that Fuller said to you as to his apprehensions about his property being seized, and what, if anything, he intended doing with reference to such a contingency.

(Objected to.)

A. I can't say that Fuller said anything to me about it, except when this attachment was got out, and then I don't remember exactly what was said. Fuller said his lawyer had recommended him, if he feared this seizure by the Government, or any attachment by anybody,
370 to have this attachment of Hayes put on his property. Hayes was in the room present. We were all there together.

Q. Do you know anything as to Hayes' pecuniary resources or means during the year 1869?

(Objected to.)

A. I have no certain knowledge of his means. Fuller told me, when Hayes was going away to return home, that he had his bill at the hotel charged to him, (Fuller.)

(Objected to, what Fuller told him.)

I had no conversation with Hayes as to his means, except about life insurance. I wanted him to take out a policy. He said he would like to do it, but he hadn't the money, and couldn't pay the premium; wasn't able to pay the premium.

Q. Was Hayes employed by Fuller in any capacity; and, if yea, what, before Fuller went to New Orleans?

A. Yes; as book-keeper for Perry Fuller & Co., 157 Broadway, New York, and was employed by him in Kansas, I think, in 1867, in cattle contracts with Indian Bureau.

Q. Did Fuller ever say anything to you about his having a place of business in Kansas, where his own son was?

(Objected to.)

A. Not that he had; that his son had a place of business in Ottawa, Kansas. Did not say what the business was.

Cross-examined:

Q. Did you make any memoranda of these conversations, or of any of them, at the time.

A. No, sir.

Q. When was your attention first called to them again?

A. On August 28th, 1869.

371 Q. What brought them to your mind then?

A. A conversation with Mr. Fant.

Q. I know the cashier, Huntington, and H. D. Cooke, the president, of defendants. Had a conversation with Huntington about a week or ten days or two weeks before the 17th of January last, about this suit. That was the first conversation I had with the agent of the bank, unless Fant was an agent. I have paid nothing except my expenses as a wit-

ness in the suit brought by Hayes against the bank in New York. Huntington gave me $50 when I came away from Washington in January last to testify in that suit, and I drew on him for $150 since, which was paid on the 17th day of January, 1870. Have not been promised anything else—not a cent. Have had no conversation with them about my compensation as a witness. I told Huntington I had no money for my expenses. He said to Latham, "Give him $50," and Latham gave it me. Huntington said to "draw on me for any further expenses you may be at." I came on from Washington to testify in the New York suit on Thursday morning, January 13, 1870. Left there Wednesday night. I had some business of my own here that I could attend to while here. It wouldn't have brought me on. Was not coming on at that time for my own business. Expected to come soon. My family came with me; that is, part of my family, wife and child. This is my residence. My expenses, the $50, were all spent. I paid $20 fare for self and family in cars, sleeping-berths, &c. My wife, self, and child, fare from
372 Washington is $8 00 each. Sleeping section, $4 for two. Fare, &c., Washington, $40. Omnibus, $1 00 in Washington. Refreshments, oysters, &c., 50 cents; porter, 25 cents, I think, but not certain. 2 tickets in coach to hotel, New York, 75 cents each, $1 50. I had not paid my bill at the hotel when I was examined in the New York suit. I don't know where the rest of the money is gone to; $50 don't last long here. They didn't tell me what amount to draw for; told me to draw for my expenses. I supposed if my expenses were $70 and I got $200 I must return the difference. Nobody promised me any money for testifying. Don't consider I had a difficulty with Fuller last summer. He wouldn't pay me my money and I ceased to be in his employ. Don't think I threatened him that I would expose or injure him in his litigations. Don't remember it. Didn't write him a letter threatening to go to Stettauer. Didn't threaten to go there. Have not been on unfriendly terms with him since last summer. Don't think he treated me altogether right. Did not say a word to anybody about the bank refusing to pay me for testifying here. Hayes was telegraphed to come here about Fuller's business, and was engaged in straightening up the accounts between Fuller and Stettauer & Co. He was on 3 or 4 times about it; was brought here expressly on that matter, because he had been the book-keeper of the firm. He had been so employed at the time Fuller told me the hotel bill was charged to him. I know nothing personally of Hayes' pecuniary means. At the conversation of Buckley, Sheldon & Co.'s, don't know whether any one was within hearing except Fuller and Hayes, except the book-keeper might have been
373 within hearing. He was about 6 feet from us. Don't know whether any one of the firm of Buckley, Sheldon & Co. was present. Think the conversation took place—I can't be positive, but think it was—on the 28th of August. I can't give the conversation, the words used in the order in which they occurred then on that occasion; could not attempt to do it.

Q. Can you state who commenced the conversation?

A. Hayes was talking when I went in about the insurance; I don't know who commenced it; I can't give Hayes' language about the insurance. Hayes said——

(Counsel stops the witness, and says he only wants the fact whether he could remember it or not.)

Q. Can you remember the words Fuller used?

A. I can remember these words distinctly. Fuller said, "That's a higher rate of insurance than I ever paid; a d——d sight higher rate than

Deposition of Thomas T. Buckley, taken before Moses B. Mackay, a notary public in and for the county of New York and State of New York, on the 5th day of April, 1870, at the city of New York.

Deposition of Tho's T. Buckley.

THOMAS T. BUCKLEY, a witness for defendants, who, being first carefully cautioned & sworn to testify the truth, the whole truth, & nothing but the truth, testifies as follows, to wit:

Ex'd by def'ts' counsel:

Question. Will you please produce the ledger accounts or copies of the ledger accounts of William Hayes with your firm?

A. This is a copy of that account taken from our ledger as it stands to-day; it is annexed, & marked Exhibit A.

Q. Has there been any alteration, corrected, or change in the account or any of the entries therein since the same, the entries, were first made?

A. No; there *is* not, to the best of my knowledge & belief. This paper, Exhibit A, in connection with the former statement rendered by me in my former examination in this suit, *are* a correct transcript of Hayes' account as it stands on our books.

Ques. Is there any account in your ledger with Perry Fuller
379 during the year 1869.

A. There is not; that is the only entry on our ledger. The last ledger entry on our ledger with Perry Fuller is under date of October 1, 1868.

Ques. Is there an account on your ledger for the year 1869 with Mrs. Mary Fuller, the wife of Perry Fuller?

A. There is.

Q. Under what date does that account commence?

A. August, 1869. I think there are two accounts; one is Mrs. Mary Fuller & one with Mary Fuller, in trust.

Q. What was the cause of that difference in the two accounts?

A. The first account was a deposit with us of $5,000 & odd in cash; this was Mrs. Mary Fuller. The other, in trust, was a deposit of the Ste'tauer note.

Q. Will you please produce, to be annexed to your deposition here, copies of those two accounts as they appear on your ledger?

A. I annex them, & they are marked B & C.

Q. Can you now state on what day the trustee account was opened on your books?

A. This letter of instruction from her is dated August 23d, 1869, and I think that was the date. I annex a copy of that instruction; it is marked Exhibit D. After we had opened the credit with Mr. Hayes, fearing that there might be some disappointment in his collecting some $10,000, which he said he had loaned out, I asked him if he could not prevail on Mrs. Fuller, to let us hold this Ste'tauer note as col-
380 lateral for his cash purchases, as we could realize upon it at bank, and place ourselves in funds for such sale. He said he did not know but what he could; that he would see about it. The note was already in our possession. Afterwards he brought me a letter from Mrs. Fuller, assenting to the proposal, with a letter from her, the wording of which did not suit me exactly, and I wrote such a letter as I wanted, sent it to her at Washington. She copied the same in her own handwriting, returned it to us, & I annex a copy, & it is marked E.

Ques. Did you retain the letter, the letter from her to the terms of which you objected?

A. I tore the letter up.

Q. Have you now any recollection of its contents?

A. I have; that letter stated it was to be collateral for the cash goods. I preferred one collateral for the whole, if I could get it.

Q. Was there any other difference between it & the letter which you wrote, Exhibit E?

A. None that I can remember.

Q. The two accounts of Mrs. Mary Fuller & Mrs. Mary Fuller, trustee, were they both opened at the same time?

A. The note we held in trust, but I don't know whether it is entered on the ledger in that way.

Ques. What person delivered that Ste'tauer note & that $5,000 odd in cash to your firm?

A. The cash & the Ste'tauer note were both delivered at the store at the same time, whilst I was absent from the store.

Ques. By what person were they left there, so far as your
381 knowledge or information extends?

A. From our book-keeper, who informs me he thought they were left by Perry Fuller immediately on his way from the settlement of the Ste'tauers. The book-keeper's name is Mr. Butts.

Q. Have you received from Hayes or from Mrs. Fuller any collateral security for Hayes' indebtedness to your firm in addition to the collateral security referred to in your deposition heretofore taken in this suit?

A. We have not in any way.

Q. Have you received from Mrs. Fuller a conveyance of any house and lot, or real estate, in or near Washington?

A. I have, as stated in my former deposition. This house & lot in Washington *was* deeded me by Ste'tauer & Mary Fuller, in trust for Mary Fuller, & is subject to incumbrance of about $11,000. I should say the deed was absolute. The firm of Buckley, Sheldon & Co., about a week since, advanced to Mrs. Fuller $2,000, on account of this, for which she gave the firm an order, same which I accepted. She stated it was absolutely necessary for her to live on, or to pay some expenses. Buckley, Sheldon & Co. have no claim on that house & lot, except to the extent of that advance of $2,000, & interest made on her order above mentioned, & I hold the property for the benefit of Mrs. Mary Fuller solely.

Q. Before Fuller settled with Stettauer, did you have any conversation with him, or with Hayes, in reference to Fuller's claims ag't Stettauer, or Stettauer & Co.?

A. Never. I did'nt know anything about them. I think Fuller
382 said once he was here to settle with Stettauers, but I didn't ask any questions. I think his remarks were they had treated him very badly; they had taken possession of his wife's property & papers in their hands, & he supposed he'd have to have a lawsuit to get them away from them, or something like that. There was some casual conversation about matters at New Orleans, & Fuller said his hands were clean; that he had not done anything wrong in any way, directly or indirectly; when he left there, every thing was straightforward & correct.

Q. Did he say anything about his having any apprehension of any proceedings on the part of the Government ag't him or his property?

A. No. He said when he left there, on March 4, everything was straight, & he couldn't be held accountable for it.

Q. Did you have any conversation with him, at any time during the summer of 1869, as to his going into business, or being interested in any business?

A. Only as I referred to in my previous deposition, that, when Hayes first commenced here, I supposed Fuller was to be interested, because I didn't know where Hayes got his money from.

Q. Was Hayes present at any of the conversations which you had with Fuller about this claim of Stettauer?

A. It would be impossible for me to say whether he was or not. They were in & out of the store together. Hayes may have been present, or he may not.

Q. To what person were the different items on the debit side of Exhibit B delivered?

383 A. To Mrs. Fuller & to her orders on us. Some of this is in merchandize that she purchased for her own use—her family. I think we have the orders on which those payments were made.

Q. In whose handwriting are those orders?

A. The bulk of them are in her handwriting; that is my impression. I think one or two are signed Mary Fuller, per Perry Fuller. There are some in Hayes' handwriting. I think Mrs. Fuller was in this city during August, 1869.

Q. After she left here the orders were mostly in her handwriting?

. My impression is that, after she left here, there were one or two drafts signed "Mary Fuller, per Perry Fuller."

Cross-examined by pl'ffs' counsel, C. W. Nelson:

Q. Have you that note of Stettauer & Co. dep'd by Mrs. Fuller here?

A. We have not.

Q. Can you state to whose order it was made payable?

A. It was made payable to the order of Mrs. Mary Fuller; it is so entered on our books, & I presume it is correct. It was paid on the 21 December, 1869; that entry was made after we had rec'd the note & before it went out of our possession.

Q. You state in your direct exam'n that when Hayes came here you supposed Fuller was to be interested with Hayes. Did you have any conv' with Hayes or Fuller with reference to this subject at that time?

A. As I stated in my former ex'n the conv' with Hayes was principally with Mr. Wheeler. I said to Hayes & Fuller, seperately, "I
384 don't want to have any business with Fuller or with any person he is connected with, on account of this affair at New Orleans," judging as I got my information from the newspapers. Fuller stated emphatically he had no interest in Hayes nor in the purchase of these goods.

Q. Have you rec'd from Hayes, or from any other person for him, since the purchase of the goods by him, any collateral security of any kind other than that delivered to you by him at the time of the purchase?

A. Strike that "him" out.

Q. Delivered to you at the time of the purchase, & the note of Stettauer?

A. We have not received any collaterals; we have received money. Hayes has paid us some money. The items on debit side of Ex'b. B, from & after date of March 22d, 1870, went to make the item on the credit side of $2,024 50.

Re-direct:

Notes received by us and placed by us in our drawer, in our pocket

book; & then, during the month or week, they are taken out & entered in the bill-book & then posted to the credit of the account.

THOMAS T. BUCKLEY.

And the said Exhibit "A," referred to in the foregoing deposition and attached thereto, is in the words and figures following, to wit:

385 *Exhibit "A," (refer'ed to in the deposition of the witness Thomas T. Buckley.)*

NEW YORK, *April 3d*, 1870.

Mr. W'm Hayes, to Buckley, Sheldon & Co., 75 & 77 Leonard street.

1869.				
Oct.	4.	To note due		3,448 14
"	18.	" " "		3,448 14
Nov.	4.	" " "		3,448 14
"	29.	" " "		2,032 26
Dec.	7.	" " "		2,032 26
"	30.	" " "		1,278 25
"	31.	" " "		3,704 30
'70.				
Jan'y	27.	" " "		4,050 80
				$23,442 29

1869.		DR.		
Sep.	6.	To cash		5 30
"	16.	" "		7
"	23.	" m'd'se, cash		28 25
Nov.	10.	" protest		1 65
'70.				
Jan'y	4.	" cash		8 14
"	4.	" "		1 65
				$23,494 28

1869.		CR.			
Nov.	5.	By cash		479 28	
'70.					
Jan'y,	17.	" " on ac. note, due 31 Dec. '69		1,704 30	
Feb'y	10.	By cash		400	
M'ch.	1.	" "		99 70	
					2,683 28
		Balance			$20,811

386 This is the account ref'd to by me in my examination as Exhibit A.

THOMAS T. BUCKLEY.

And the said Exhibit "B," referred to in the foregoing deposition and attached thereto, is in the words and figures following, to wit:

Exhibit "B," (referred to in the foregoing deposition of Tho's T. Buckley.)

NEW YORK, *April* 5, 1870.

Mrs. Mary Fuller to Buckley, Sheldon & Co., 380 & 382 Broadway.

1869.			CR.		
Aug.	31.	By	cash		5,196 03
'70.					
M'ch	21.	"	note (due 23 May, 1870. *)		2,024 50
					7,220 53

1869.			DR.			
Aug.	21.	To	cash		1,000	
"	"	"	"		360	
"	23.	"	"		1,000	
"	26.	"	"		100	
"	27.	"	"		500	
"	27.	"	"		175	
"	28.	"	"		100	
"	31.	"	"		100	
"	31.	"	"		72	75
387 "	23.	"	"		12	70
"	24.	"	"		13	17
"	21.	"	"		5	40
"	23.	"	"		28	89
Sep.	1.	"	"		150	
"	3.	"	"		100	
"	6.	"	"		250	
"	23.	"	"		300	
"	21.	"	"		100	
Oct.	26.	"	"		300	
Nov.	24.	"	"		42	50
"	21.	"	"		1	45
Dec.	1.	"	"		200	
"	18.	"	"		175	
1870.						
Jan'y	18.	"	"		2	50
"	19.	"	"		109	
Feb'y.	4.	"	"		10	
M'ch	22.	"	"		359	
"	22.	"	"		643	35
"	22.	"	"		1	10
"	26.	"	"		1,002	40
						7,214 21
						$6 32

This is the paper ref'd to in my deposition as marked Ex'b't B.
THOMAS T. BUCKLEY.

* This note is for two thousand dollars, & interest, loaned her, for which we have her order on Tho's T. Buckley, to be paid out of proceeds of sale of house & lot at Washington, D. C.

And the Exhibit "C," referred to in the foregoing deposition and attached thereto, is in the words and figures following, to wit:

Exhibit "C."

388 NEW YORK, *April* 6, 1870.

Mrs. Mary Fuller, to Buckley, Sheldon & Co., 75 and 77 Leonard street.

1869.			
Aug.	23d.	By Stettauer note, due Dec. 20, '69, collateral for account of William Hayes.....	10,900 00
'69.			
Dec.,	30.	To protest on same.....	1 50

Exhibit "C," referred to in the foregoing deposition of the witness.
THOMAS T. BUCKLEY.

And the said Exhibit "D," referred to in the foregoing deposition and attached thereto, is in the words and figures following, to wit:

(Copy.)

WASHINGTON, D. C., *Aug.* 23*d*, '69.

BUCKLEY, SHELDON & CO.

GENTLEMAN: Out of any money that is to my credit now, or may be hereafter, you are authorized to pay only those drafts which are signed by me personally, or my husband, Perry Fuller, for me.

Resp'y,
(Signed) MARY FULLER.

Exhibit "D," referred to in the foregoing deposition of the witness.
THOMAS T. BUCKLEY.

And the said Exhibit "E," referred to in the foregoing deposition and attached thereto, is in the words and figures following, to wit:

(Copy.)

389 WASHINGTON, D. C., *Aug.* 23*d*, 1869.

BUCKLEY, SHELDON & CO.

GENTLEMAN: I have sent you a note of L. Stettauer's, dated New York, Aug. 20th, 1869, payable on the 15th of December next, for ten thousand nine hundred dollars, which note I placed in your hands as collateral security for any indebtedness of William Hay's. The note or its proceeds you are to keep until his indebtedness to you is paid, after which the note, or the proceeds of said note, is to be returned to me, on my order signed by me.

Resp'ly,
(Signed) MARY FULLER.

Exhibit "E," referred to in the foregoing deposition of the witness.
THOMAS T. BUCKLEY.

Mr. Dillon read the account of Mr. Hayes, (copied in the deposition

of Thomas T. Buckley on the part of the plaintiff, on page 281 of this transcript.)

The deposition of John H. Butts.

The deposition of John H. Butts, taken before Moses B. Maclay, a notary public in and for the county of New York and State of New York, on the 6th day of April, A. D. 1870.

Deposition of John H. Butts, jr.

JOHN H. BUTTS, jr., a witness for defendants, being duly sworn & examined, testified as follows:

I was book-keeper at Buckley, Sheldon & Co. during 1869. I have known Perry Fuller 6 or 7 years, & Hayes some 3 years.

390 Q. Do you know anything about the deposit with Buckley, Sheldon & Co., in August, 1869, of about $5,000 in cash, & a note of L. Stettauer for $10,900? If yea, state all you know on the subject.

A. I can merely say that the note & cash were handed into the office either by Perry Fuller or William Hayes, one or the other, to be credited to Mrs. Mary Fuller, the note to be credited to her as collateral for Buckley, Sheldon & Co.'s account against William Hayes. I don't know that I can say anything more, except that I was a partner in the house, & we sold those goods to William Hayes.

Q. Were the instructions to so credit that note as collateral given when it was first deposited?

A. Yes, sir; so I understood it.

Q. Have you ever had any conversation with Fuller or Hayes in reference to that note?

A. No, sir.

Q. Look at Exhibit B, referred to in the testimony of Mr. Buckley, & state if you remember in whose handwriting the orders for the items on the debit side of that account were.

A. I couldn't answer it. They are on file; they ought to be there.

Cross-examined by plaintiffs' counsel, C. W. Nelson:

Q. This note, which you mentioned, was deposited with B., S. & Co. Can you state to whose order it was made payable?

A. I can; it was payable to the order of Mrs. Mary Fuller.

Q. Can you recollect to whom this note & the cash were handed in your office?

A. No, sir.

387*a* Q. Were they handed to the person who received them in your presence?

A. I think not.

Q. Did you see this note & cash handed to the person?

A. I do not recollect seeing it; no, sir.

Q. Can you state when this deposit was made?

A. I can state nothing further than the date that is on our books.

Q. Were the entries in your books showing the date of such deposit made by you?

A. Yes, sir.

Q. Have you those books present?

A. Yes, sir.

Q. Please produce them.

A. (Witness refers to ledger & answers.) August 21st, 1869.

Q. Do you mean to state positively that, at this time & when this de-

posit was made, you were instructed to hold this note as collateral security for William Hayes' indebtedness?

A. My impression in regard to the credit of the note is that it must have been on the 23d of August, some 2 days later than the cash credit.

Q. What do you mean by the credit of the note a few days later?

A. I mean the note of L. Stettauer for $10,900, due in Dec., 1869.

Q. What do you mean by the credit of the note in the 23d; to whom was it credited?

388*a* A. I mean, according to our ledger, that was the date on which we held it as collateral—on which we entered it as collateral.

Q. Can you now state whether, at the time this deposit was made, on the 21 of August, the note for $10,900 was directed to be placed or held as collateral security for William Hayes' indebtedness?

A. I don't remember anything in regard to the note on the 21 of August as to its being collateral.

Q. Do you recollect by whom you were directed to make this entry placing this note as collateral for Hayes' indebtedness?

A. I do not. My impression is that Mr. Buckley directed me to credit the note as collateral on or after the 23d of August.

Q. (Ex'b. B handed to witness.) Do you recollect to whom the item of $100, paid August 28th, as stated in this exhibit, was paid?

A. I think I do. It was paid to Mr. Hellen, or a party representing himself as Mr. Hellen; it was paid by me. I think Mr. Fuller was present. I don't remember as to his being in the office. I think he was in or about the office.

Q. Do you know whether your house made application for insurance on the goods purchased by Hayes of your firm?

A. I do; we did.

38*a* Q. Do you remember any conversation had between Hayes, Fuller, & yourself relative to this insurance at the time when this $100 was paid to Hellen & while Hellen was present? If so, state it as near as you can recollect.

A. Mr. Hayes objected to the rate of insurance, &, I think, remarked to Fuller that it was more than he had ever paid before; that we could cancel the insurance, & he would get it elsewhere. I think Hellen was outside of the office window at that time, & that I asked Fuller to identify Hellen as we paid the currency to him for Mary Fuller's draft on us. I don't recollect anything further.

Q. Do you recollect hearing Fuller, in that conversation, or at that time, in Hellen's presence, use these words: "That's a higher rate of insurance than I ever paid; a d——d sight higher rate than I ever paid. Hayes, go right down & see if you can cancel it?"

A. No, sir.

Q. Did you hear Fuller use any words to that effect at that time?

A. I think not.

Q. In that conversation do you recollect Hayes using these words: "But, Perry, that includes the river risk?"

A. No, sir.

Re-direct ex'a.:

Q. Mr. Buckley has been present during my examination.

Q. Was not the part of your answer to the question on cross-examination as to by whom your were directed to make the entry placing the Stettauer note as collateral for Hay's indebtedness which follows

390*a* the words "I do not" given after Mr. Buckley had made to you here a statement of his recollection on the subject-matter of the question?

A. That portion of my answer was stated after Mr. Buckley had given me his version of the matter.

Re-cross exa.:

Q. Did you frame all of your answer upon Mr. Buckley's suggestion or statement?

A. No, sir.

Q. You state, in your direct examination, that the note was handed in to be credited to Mrs. Fuller as collateral security for Hayes' indebtedness; can you now state, of your own recollection, whether this note was directed to be so credited as collateral security at the time it was deposited?

A. Not at the time deposited.

Q. (Ex'b. E shown witness.) Have you ever seen the original letter of which this is a copy?

A. I have.

Q. Was that credit made as collateral security at or before the receipt of this letter by your firm?

A. No, sir; it was made on the 23d of August, 1869—the same date as that letter.

Q. Was not that credit made pursuant to the instructions contained in that letter?

A. Yes, sir.

Re-direct:

Q. Did not the firm of Buckley, Sheldon & Co. receive another & a previous letter from Mrs. Fuller in reference to that note before they received the original of Ex'b E?

391 A. My impression is we received a letter that did not cover the case, and that this was subsequently sent as a correction of the former one. We had received that previous letter I couldn't say how long before the original of Exhibit E; don't remember. I couldn't say how many days before; couldn't say anything about it; it would be merely conjecture; I couldn't say.

JOHN H. BUTTS, JR.

The deposition of Washington E. Langley.

The deposition of Washington E. Langley, taken at the city of New York, on the 7th day of April, 1870, before Moses B. Maclay, a notary public in and for the county and State of New York.

Deposition of Washington E. Langley.

WASHINGTON E. LANGLEY, called as a witness for defendants & sworn, testified as follows:

During 1869 I was a member of the firm of Langley, Satterlee, Blackwell & Co., of this city, wholesale dealers in hats & caps, &c. I know Perry Fuller, & have known him about twelve years. He had been an Indian contractor, a merchant, &c., during that time. I had repeatedly had business dealings with him during that time, a portion of the time as a partner of Kearney, Stevens & Co., & part McDonald, Fuller & Co., & P. Fuller & Co. I had no transactions with him or any firm of which he was a member during 1869. My present firm had no transac-

392 tions with any firm of which he was a member during 1869. I know the plaintiff, William Hayes; known him, I should judge,

in the neighborhood of six years. His occupation, when I first became acquainted with him, was a book-keeper for some firm, corner of Murray street & Broadway. I presume it may have been P. Fuller & Co., but I don't known the style of the firm; next that I knew of him in any capacity was when I met him as a buyer of goods here. He called on my firm to buy goods. He called there repeatedly. Mr. Fuller was here in New York with him at the same time.

Q. While Hayes was calling at your store taking goods, did Fuller call with him from time to time?

A. Fuller was in the store while Hayes was here buying goods; sometimes they happened in there together. Hayes was in there repeatedly alone.

Q. Did you have any conversation or make any enquiries of Fuller as to Hayes' means at that time?

A. I don't think I did. I think Fuller made a general observation to me that Hayes was good for anything I might sell him.

Q. Have you here a copy of the ledger-account of your firm with Hayes? & if so, please produce & annex it to this your dep'n.

A. I have & I produce & annex it accordingly, (marked Exhibit No. 1.) The total amount of Hayes' indebtedness to my firm is $2,270 40.

393 We received from Hayes the three notes, amounting to $2,260 90, mentioned in that exhibit, about the 27th day of August, 1869.

Q. Did any person, &, if so, who, endorsed those notes?

A. Perry Fuller.

Q. Did you, or any member of your firm, have any conversation with Fuller in reference to his endorsing those notes?

A. Not a word. I sold these goods & they were shipped. I found that Hayes had given Fuller's endorsement; that Fuller had endorsed for another house; & when he came into the office to settle his bill, I thought two names might be better than one, & I says to him, "Suppose you draw these notes as you drew the notes for such & such a house;" & after a few minutes' hesitation, he said he would draw them in that way; & I afterwards received the notes with Fuller's endorsement on from Hayes. I presume his name is in the notes.

Cross-examined by Mr. C. W. Nelson, pl'ffs' counsel:

Fuller has been in the habit of calling at my store usually when he comes to New York; he & I *are* intimate for years.

W. E. LANGLEY.

And the said Exhibit No. 1, attached to the foregoing deposition, is in the words and figures following, to wit:

Washington E. Langley.
Gregory Satterlee.
Tunis H. Blackwell.
Edward H. Branch.
Harvey B. Anderson.

NEW YORK, *Ap'l* 7, 1870.

Mr. William Hayes, Ottawa, Franklin Co., Ka's, to Langley, Satterlee, Blackwell & Co., 313 & 315 Broadway, Dr.

394 1869.

Aug. 22.	Do m'd'ze	2,224 70	
27.	" stamps	1 20	
25.	" m'd'se	35	
Sept. 6.	" "	9 50	
			2,270 40

'69.					
Aug. 27.	By B. Rec.	※ 261	753 63		
"	"	※ 262	753 63		
"	"	※ 263	753 64		
				2,260	90
				9	50

Exhibit No. 1, referred to in the annexed deposition of Washington E. Langley.

W. E. LANGLEY.

Exhibits considered read.

The deposition of Daniel *B.* Bennet.

The deposition of Daniel V. Bennett, taken before Moses B. Maclay, a notary public in and for the county of New York and State of New York, on the 8th day of April, 1870, at the city of New York.

Deposition of Dan'l V. Bennett.

DANIEL V. BENNETT, a witness for defendants, being sworn, testifies:

My name is Daniel V. Bennett; my age, 53; my place of residence, No. 392 State street, Brooklyn; place of business, No. 343 Broadway. During 1869 I was a salesman with Dubois, Magovern & Co., and am still. I know Perry Fuller & William Hayes. I have known Ful-
395 ler for 10 or 12 years, & have known Hayes about one year. I first became acquainted with Hayes in the year 1869; I became acquainted with him during the summer of 1869; Mr. Perry Fuller introduced him to me at our place of business, which was then 373 Broadway.

Q. Please state all that was said when Fuller so introduced Hayes to you.

A. Fuller said he introduced me to Hayes as a merchant from Kansas, represented him to be a responsible man, & I sold him a bill of goods on a credit of 4 months—a bill of goods of boots & shoes; I think the amount was about $2,600—from Dubois, Magovern & Co.

Q. What did Fuller say to you then on the subject of Hayes' responsibility? State fully.

A. Hayes represented to me that he was worth about $40,000. I told him I had nothing to do with the credits of the house, & I would introduce him to Mr. Dubois, who make his credit. All that Fuller said when he introduced him to me was, a good, responsible man, & I could sell him a nice bill of goods. The goods were selected the next day after Mr. Hayes had his talk with Dubois. He examined some of the goods at the time he was introduced to me by Fuller. After that Fuller was in there very often with me.

Q. After that interview, when Fuller introduced Hayes to you, did you or not see him & Hayes in the store together?

A. I did.

Q. On more than one occasion?

396 A. Yes, I think they were in there—would stop in there as they were going up the street—several times.

Q. Did you know at what hotel Fuller & Hayes were then stopping?

A. They were stopping at the St. Nicholas, I think, sir.

Q. Did you, about that time, see them together at any place except at your store?

A. Yes, I met them several times in Broadway & at the St. Nicholas Hotel.

Q. Did you have any conversation with Fuller or Hayes as to introducing Hayes to any other business firms in this city?

A. I had no conversation with Fuller; I had with Hayes.

Q. Did you introduce Hayes to any other firms, &, if so, to what firms?

A. I introduced him to a crockery-house in Park Place, Bassett & Co.; that's the only one. I really don't remember whether Fuller was present when Hayes requested me to give him that introduction; my impression is he was not.

Q. Did you see Fuller & Hayes together at any other place or places except at your store, the St. Nicholas Hotel, & in Broadway?

A. I met them at Langley, Satterlee, Blackwell & Co.'s; no other place in particular, except taking oysters together or something like that,—no place of business.

Q. For how long a period in 1869 were you in the habit of so seeing or meeting with Hayes & Fuller?

A. I should think it was for about a period of 10 or 12 days. It
397 was only during the period that Hayes was here purchasing goods.

Q. Had Fuller any place of business or residence in this city at that time, so far as you know?

A. Not that I know of.

Q. Did you then have any conversation or conversations with Fuller as to his own affairs, as to his relations with the United States Government?

A. I had not, sir.

Q. Did you then have any conversation or conversations with Fuller as to any business in which he then was, or in which he contemplated becoming, engaged?

A. No, sir; I did not.

Q. Was any arrangement made as to Fuller's endorsing Hayes' notes, given to Dubois, Magovern & Co. for the goods purchased in Hayes' name?

A. Mr. Fuller said he would endorse the paper if the house required it, but also stated at the same time that the paper was perfectly good without any endorsement. This was at one of the interviews at our store. Hayes was not present at the time.

Q. State whether or not your house required Fuller's endorsement, &, if so, whether or not it was given on Hayes' notes.

A. I believe Mr. Fuller endorsed the paper, but I don't think they required it. Hayes was occupied about 3 or 4 hours in selecting the goods. Fuller was there a portion of the time, and was present at the selecting of the goods a portion of the time.

398 Q. Did you, while Fuller was so in the city with Hayes, have any conversation with him about any claim or any suits he had against Louis Stettauer or the firm of L. Stettauer & Co.?

A. No. Never heard him mention it.

Cross-examined by plaintiffs' counsel, C. W. Nelson:

I have a family; I have a son. After Hayes purchased the goods I had a conversation with him about my son; he told me he wanted a young man to go out west with him. I made arrangements with him for my son to go with him. Fuller has been in the habit of calling on me when in this city. During this period Fuller was in the store alone very

often; when passing up the street he'd stop in; he was only in with Hayes once or twice. My relations with Fuller during these 10 or 12 years have been intimate. I saw Fuller several days before he introduced Hayes to me. I saw him alone; did'nt see Hayes with him before he introduced him to me.

Q. At the several times you met Fuller, prior to the introduction of Hayes, did you have any conversation with him?

A. Nothing more than he said he had a man he would introduce to me, & I could sell him a respectable bill of goods.

(Pl'ff's counsel moves to strike out the answer as not responsive.)

Q. (Repeated.) Answer yes or no.

A. Yes. He said a great deal to me.

Q. Did Fuller, in any of these conversations, state to you what he was then doing in New York?

399 A. He did not.

Q. Did he state what had called him in this city?

A. He did not.

Q. Was the conversation relative to Fuller's endorsement of Hayes' paper at the first meeting—that is, the time Hayes was introduced to you?

A. I think it was after Hayes had his conversation with Dubois. This was after the goods were selected. I was not present when the notes were given; have never seen them since. Hayes did not select the goods immediately after being introduced; it was several days after before he selected them.

Redirect:

Q. Did you say anything to Fuller on the subject of your son's going with Hayes?

A. I never said anything except I asked him what kind of a man Hayes would be for my boy to live with.

Q. Did Fuller know that your son was going out to Kansas with Hayes?

A. He did, after I told him.

Q. You have stated on cross-exa. that before Fuller introduced Hayes he said he had a man whom he would introduce to you, & that you could sell him a respectable bill of goods. How long was that before he introduced Hayes to you?

A. It was, I think, the day before he introduced him to me.

Q. What else did he then say about that man he proposed introducing, if anything?

400 A. He said he was a good man; he said he was from Kansas. I don't think I asked him how much he was worth, then. I didn't think it necessary to go into details then.

Q. Please repeat now all that Fuller said when he introduced Hayes to you.

A. He introduced him as Mr Hayes from Kansas, & said he was responsible man, & good for his contracts; that's about the whole conversation that I remember. I asked Fuller after this, how much Hayes was worth, & he said he was worth $40,000; that was a day or two after the introduction.

Recross-exa.:

Q. Are you positive that Fuller said Hayes was from Kansas, or going to Kansas?

A. I am not positive; my impression is he said he was buying goods for Kansas.

Redirect:

Fuller said that Hayes' place of business was at Ottawa, Kansas.

Recross:

He didn't state that Hayes had a place of business at Ottawa, Kansas, but that he was buying goods for Ottawa, Kansas.

D. V. BENNETT, JR.

The deposition of Henry T. Skerrill.

401 The deposition of Amory T. Skerry, taken at the city of New York, on the 9th day of April, 1870, before Moses B. Maclay, a notary public in and for the county of New York and State of New York.

Deposition of A. T. Skerry.

AMORY T. SKERRY; my age, 39 years; my place of residence, Brooklyn; my place of business, 451 Broadway. I am connected with the firm of L. M. Bates & Co. During 1869 I was with the firm of Curran, Goodwin, Walker & Co., No. 359 Broadway. I know Perry Fuller & have known him 5 or 6 years. I know William Hayes, & have known him, I should say, 4 years. When I first became acquainted with him he was connected with Fuller in some way; I don't know, in what capacity. Hayes was then at the office of Perry Fuller & Co., in this city, corner of Broadway & Murray street. I think I saw him in the office. I can't say whether as clerk, accounted, or what; he was at that place, to my knowledge, I should say, a year or more; he went from that down to Stettauer's counting-room, or some office in Murray st., 35 or 37—or I am under the impression it was Stettauer's. Perry Fuller & Co's office was at that place, and Hayes was there acting for them in some capacity; he remained there but a short time as I recollect. My impression is he remained there down to the middle of the year 1868, but I don't speak from knowledge; that is my best recollection; & from there I don't know where he went to. I next saw Hayes, I think, last fall, in 1869, at our store, Curran, Goodwin, Walker & Co.'s, & also at St. Nicholas
402 Hotel; met him in the street two or three times. He was accompanied on the occasion of his calling at Curran, Goodwin & Walker's store—once or twice he was accompanied—by Perry Fuller, & also came there alone; I don't think I saw him at the St. Nicholas Hotel in company with Fuller. Hayes called at our store, in the fall of 1869, three or 4 times; it might have been half a dozen times.

Q. Were you present at any conversation with Fuller, at which Mr. Rice, of your firm, was also present, in reference to Hayes' means & responsibility?

A. I don't recollect being present at any conversation of that description where Mr. Rice was present. I believe our house sold Hayes on a credit of 4 months.

Q. Were you present at any conversation with Fuller in reference to his endorsing Hayes' notes, given to your firm?

A. I couldn't swear positively.

Q. Did your firm, Curran, Goodwin, Walker & Co., procure Fuller's endorsement on Hayes' notes, given for the merchandize purchased by him?

A. I believe they did.

Cross-examined by pl'ff's counsel, C. W. Nelson:

First became acquainted with Fuller by introducing myself to him at

the St. Nicholas Hotel, in the fall of 1864 or 1865. I know that office, corner of Broadway & Murray street, was Perry Fuller & Co.'s, because I saw the sign over the door, & up stairs, but I knew it was his office. I derive my knowledge as to what Hayes' occupation was then, from Hayes claiming to represent Perry Fuller & Co.; don't think he stated in what capacity he represented them.

403 Q. Can you state positively he ever represented himself as representing Perry Fuller & Co.?

A. Yes.

Q. Might he not have been engaged in business for himself there also?

(Obj'd to.)

A. For aught I know he might.

Q. At this time did you have business transactions with Perry Fuller & Co.?

A. Yes; I was having them from time to time.

Q. You say he remained till 1868; are you positive as to the year?

A. No; only to the best of my recollection.

Q. Might it not have been 1867?

A. The time I can't state positively at all; it might have been 1867.

Q. Did you sell these goods sold by your house to W'm Hayes?

A. Did I wait on him personally?

Q. Yes.

A. Not more than $500 worth of them, I should say.

Q. How often did Hayes call alone at your store?

A. He might have called alone there 2 or 3 times.

Q. Do you know who gave the shipping directions for these goods?

A. Mr. Hayes.

Q. Were you present when the notes were given to your firm by Hayes?

A. I was in the store at the time.

404 Q. Did you see Hayes deliver these notes to the firm?

A. I did not; they were delivered in the office. I was in the vicinity of the office at the time, but didn't see them actually delivered by Hayes. I can't swear positively that I have never seen the notes.

Redirect:

Q. Did you have any conversation with Hayes as to Fuller's endorsement being on the notes?

A. I did not. I learned that the notes had Fuller's endorsement from the firm; the notes were signed in our store; I did not see them signed. Hayes & Fuller were not both present when they were signed.

Q. Were Hayes & Fuller together when the notes were endorsed?

A. I don't know.

Q. At what place were the notes endorsed?

A. In our office.

Q. Were they signed & endorsed at the same time?

A. No, sir.

Q. How do you know they were not?

A. Because Hayes signed them at night, & Fuller came in the next morning, & endorsed them. I can't swear positively whether Fuller came in alone to endorse them, or whether he came in company with Hayes. I presume our book-keeper (it might have been Mr. Prindle, the head book-keeper,) prepared the notes.

Q. You say you sold only about $500 of the goods; who sold the balance of those purchased from your firm?

A. The salesmen—men in the departments where the goods
405 were bought. Their names—I think the man who sold the white goods is named Davidson. I don't know the name of the man who sold the silks; he is an assistant in the silk department.

Q. When Hayes first called to your store in 1869, was he accompanied by Fuller?

A. I think he was.

Q. Was he introduced by Fuller there to any person or persons?

A. I don't recollect that he was.

Q. On that occasion, when Hayes first called at your store in company with Fuller, who first spoke to you—Hayes or Fuller?

A. I can't tell you.

Q. Who then first spoke to you on the subject of business?

A. I can't swear that business was spoken of at the first interview, for they might have called in as friends. The goods I sold were dress-goods—alpaccas & merinos. I can't tell at which interview business was first spoken of. They were in there—in & out several times. It might have been the 4th; might have been the 5th; might have been the 3d. Fuller was present at the time the goods were selected, & he saw them selected.

Recross-ex'd:

Q. Did you see Fuller endorse these notes?

A. I saw him as he was in the act; I didn't see his pen; didn't see the notes; but I saw him there at work.

Q. Were you inside the office at this time?

A. No, sir.

406 Q. Can you state positively that he was then endorsing these notes?

A. I know he came to do it, & went in there to do it.

(Pl'ff's counsel moves to strike out the answer as not responsive.)

Q. (Repeated.) Answer yes or no.

A. Yes, sir; I can.

Q. Did you see the notes?

A. No, sir.

Q. From the position in which you stood, could you see the notes had they been on the desk when Fuller was engaged at work?

A. No, sir.

Q. Did you see the notes prepared?

A. I did not.

Q. You've testified in redirect that you saw Hayes several times before you sold him the goods; was he alone at any of these times?

A. Yes; he was. He called alone at our store once or twice.

Q. Who first spoke to you about selling these goods?

A. Mr. Hayes.

Q. Please state, as near as you can recollect, what he stated?

A. Well, he wanted to buy a bill of goods, & was worth about $40,000. This was before the sale.

Redirect:

Q. Did you also have a conversation with Fuller as to Hayes' means & responsibility, or were you present at any conversation when
407 Fuller spoke on that subject?

A. I don't think I heard anything said by Fuller as to Hayes' responsibility.

AMORY T. SKERRY.

The deposition of Sidney Mills.

The deposition of Sidney Mills, taken on the 15th day of April, A. D. 1870, at the city of New York, before Moses B. Maclay, a notary public in and for the county & State of New York.

Deposition of Sidney Mills.

SIDNEY MILLS, called by defendant's counsel, & duly sworn.

Ex'd by def't's counsel:

I reside in this city; I am twenty-six years of age; my place of business, at present, is at No. 314 Broadway, in this city. During 1869 I was with George P. Bradford & Co., of this city, as salesman. I know Perry Fuller & William Hayes. I was first introduced Hayes in the fall of 1869, while he was buying goods of the firm of George P. Bradford & Co. Perry Fuller was with Hayes at the time. I am not certain whether I was introduced to Hayes by Fuller or by Mr. Bradford. I had been acquainted with Fuller some 3 or 4 years prior to that time. When I first knew Fuller he was buying goods for some store out in Kansas. I believe it was one of his concerns. Our house (George P. Bradford & Co.) had been in the habit of selling him clothing—ready-made clothing. I don't remember whether Fuller remained dur-
408 ing the whole of my first interview or not. When Hayes was introduced, I was asked by Mr. Bradford to sell him a bill of goods. We went to work immediately upon that to select the goods. I don't think they were all selected that day. Hayes was in the store several times after that for the purpose of selecting them, but I can't remember how many times. Hayes was in the store about as many times without Fuller as with him. What I mean to say is, that Hayes was in there several times alone, but when Fuller called Hayes would usually be with him, or accompany him. On these occasions, I don't know that Fuller had any business in our store except to introduce Mr. Hayes. Fuller was present while Hayes was selecting the goods, when he was first in there, & he saw him selecting them. Fuller said he was acquainted with the trade out there, & knew better what Hayes wanted than Hayes did himself, & he pointed out to Hayes what he thought were suitable goods for that trade, I recollect particularly. He told him to select more of low & medium priced goods than of fine goods. As I understood from Hayes, he was going to open a place at Ottawa, Kansas. He did not say he had the place already opened, but was going to open it. I think on the occasion when I was first introduced to Hayes, that General Steedman was present, besides myself, Bradford, Hayes, & Fuller. I don't recollect that I heard anything in particular of the conversation that then went on between Fuller, Hayes, & Bradford as to the standing of the witness in Kansas. Our goods were sold to Hayes on a credit of 4 months, according to the best of my recollection, & the
409 firm received Hayes' notes for the amount. I don't know whether the notes were endorsed by any one for Hayes. I wasn't present when they were endorsed, nor when signed. If I took the notes to the hotel, I took the notes there for the purpose of having Hayes sign them. I am the only salesman in that store who waited on Hayes while he was making his purchases there. During that fall of 1869, while Hayes was making his purchases, I occasionally met him & Fuller at the St. Nicholas Hotel. I believe they were staying at that hotel at that time. I don't recollect of meeting them anywhere else except at our store & at the hotel.

Cross-ex'd:

I know of no one, except Hayes, having anything to do with the purchase of these goods. The goods were billed to him, and all the transactions in regard to the sale were with him.

Q. During any of those conversations, did Fuller make any pretensions that he was buying any of the goods himself, or that he was interested in the purchase of them?

A. No, sir.

S. B. MILLS.

The deposition of John McGovern.

The deposition of John P. Magovern, taken at the city of New York, on the 18th day of April, A. D. 1870, before Moses B. Maclay, a
410 notary public in and for the county of New York and State of New York.

Deposition of John P. Magovern.

JOHN P. MAGOVERN, a witness for defendants, being duly sworn & examined, testifies as follows:

Ex'd by def't's counsel:

I reside in the city of New York. I am 33 years of age. I am a member of the firm of Dubois, Magovern & Co., of this city, & was during the year 1869. I have met Perry Fuller & William Hayes; I met them in this city last summer at our store; they were in company together at our store when I met them; that was my first acquaintance with either of them; I did not meet them at any other place; I met them in that way at our store once or twice; the first time they came in they were doing nothing; they were introduced to me by Mr. Bennett, our salesman. I paid no further attention to them. I made one enquiry about Hayes of Langley, Satterlee, Blackwell & Co. I made no enquiry about Hayes of Perry Fuller; didn't hear Fuller say anything at all as to Hayes' means. I don't know whether my firm had any statement from Hayes as to his means; Mr. Dubois, my partner, attends to that part of the business; I don't know whether my house got Fuller's endorsement or Hayes' notes given for the goods; I don't know anything about the notes being sent to Fuller for endorsement; I don't remember that I, personally, had anything to do with the sale of the goods, except I might have assisted the salesman if he asked me where a certain kind of goods were kept; the salesman who attended to the sale of these goods was Mr. Bennett.

Cross-examined:

411 All the goods sold by my house at this time were sold & billed to Hayes.

JOHN P. MAGOVERN.

The deposition of H. W. Belcher.

The deposition of Henry W. Belcher, taken at the city of New York, on the 20th day of April, A. D. 1870, before Moses B. Maclay, a notary public in and for the county of New York and State of New York.

Deposition of Henry W. Belcher.

HENRY W. BELCHER, who being duly sworn & examined, testifies as follows:

I am in my 50th year; I reside in Phillipstown, Putnam County, in

this State. I was during 1869, a member of the firm of Henry W. Belcher & Co., of this city; that firm was in the grocery business. I know Perry Fuller, & have known him about 3 years; & have known William Hayes about the same time; have known Fuller somewhat longer than Hayes. When I first became acquainted with Hayes I think he was engaged with Fred'k A. De Wolf in the Indian trading business in the Indian Territory—that is, De Wolf bought goods for the Indian trade. I became acquainted with Hayes about the time we sold De Wolf, but whether he was interested with him I don't know; my impression is, he was in the Indian Territory with him; I don't recollect at what place in the Indian Territory this business was carried on.

Q. Did you have any conversation with Hayes as to his having any interest in that business with De Wolf?

(Ob'd to.)

412 A. I did not.

Q. What facts did you observe, from which you received the impression that Hayes was engaged with De Wolf in that Indian business.

(Ob'd to.)

A. My impression is he was not an interested party, but rather a clerk.

Q. During your acquaintance with Hayes, how frequently have you been in the habit of meeting with or seeing him?

A. Not very often. From the time I first became acquainted with Hayes down to August, 1869, I would meet or see him only, perhaps, 3 or 4 times a year, & in all during the whole period, prior to August, perhaps 8 or 10 times. On some of those occasions prior to August, 1869, Hayes came alone & on others he would be accompanied by De Wolf, & at others by Perry Fuller, and perhaps by other persons whom I don't recollect now.

Q. When he came alone what was his business with you or your firm?

A. Before Aug't, 1869, I think he called more as an acquaintance than otherwise. I don't recollect of any special business.

Q. When he called in company with De Wolf & Fuller, what was his business with you or your firm?

A. I think simply as an acquaintance—no special business.

Q. Up to August, 1869, had you known of Hayes ever doing business on his own account?

A. I did not.

Q. Up to August, 1869, had you any knowledge as to his means or pecuniary responsibility?

(Obj'd to.)

413 A. I had not.

Q. When he called on your firm in August, 1869, state whether or not he was *he* accompanied by Perry Fuller, & with which member of your firm he first conversed on the subject of purchasing goods on credit?

A. When he first called my impression is he came in alone; my impression is it was with myself he conversed; on some of the occasions of his calling in August, 1869, he was accompanied by Fuller. I can't state the language that was used during his interview with me; my impression is I had no conversation with Hayes in presence of Mr. Fuller. Mr. Dickinson may have been with me at times when I was conversing with Hayes, & *do* doubt he was.

Q. Your partner, Mr. Dickinson, who has been examined, states that, when Hayes called to buy goods in Aug't, 1869, Fuller accompanied

him. Does your present recollection differ from that of Mr. Dickinson on that subject?

A. My impression was that Hayes came in alone first, & that Fuller came in subsequently with him, & that is my impression now.

Q. On the subsequent occasions when Fuller called with Hayes, what was he doing there with him?

(Ob'd to, &c.)

A. He came in as an acquaintance I should say, & he may have come in to talk terms. I don't know anything about his coming in for that purpose; I mean to say that he may have come in to state that he
414 would endorse notes as agreed by Hayes, or he may have come in to endorse said notes.

Q. Did you have any conversation with Hayes as to Fuller's endorsing his notes? If so state it.

A. In the negotiation for the sale of goods, Hayes wanted to purchase them upon his own name & we declined, and in further negotiations, at a subsequent time, we agreed to sell the goods to Hayes, provided Mr. Perry Fuller would endorse the notes. That is the substance of the conversation.

Q. Did you have any conversation with Fuller on the subject of his endorsing Hayes' notes, in the presence of Hayes?

A. My impression is I had no conversation at all with Fuller about endorsing these notes.

Q. Did your firm afterwards receive Fuller's endorsement on Hayes' notes?

A. We did. Mr. Dickinson did that.

Q. Some of our notes have been paid & the amount remaining unpaid is $2,702 15, without interest?

Cross-examined:

The goods were sold & billed to Hayes, & to no one else. I knew of no one else having any interest in those goods.

Q. Do you know, of your own knowledge, what Fuller came in there with Hayes for?

A. I don't.

HENRY W. BELCHER.

415 The deposition of John E. Cowles.

The deposition of John E. Cowles, taken on the 23d day of April, A. D. 1870, at the city of New York, in the county and State of New York.

Deposition of John E. Cowles.

JOHN E. COWLES, who, being duly sworn & examined, on the part of the defendants, testified as follows:

I am 43 years of age & upwards. I reside in the city of New York. During 1869 I was a member of the firm of George P. Bradford & Co. of said city, No. 349 Broadway. I know William Hayes & Perry Fuller. I have been acquainted with Fuller for six or seven years. During that period, so far as I have heard, he has been engaged in the Indian trading business & several other occupations.

(Objection to what witness has heard.)

Q. Please state what has been Fuller's business or occupation while you have been acquainted with him, so far as your knowledge extends.

A. I don't know, of my own knowledge; he has never been engaged in business here that I know of.

Q. Did you ever have any conversation with him as to his business?

A. I never have had, except in a casual way.

Q. How long have you known William Hayes?

A. For some years—for 3 or 4 years last past.

416 Q. What was his occupation when you first became acquainted with him?

A. I don't know what it was. If I ever did know, I don't recollect now.

Q. Was he in the employ of any person or firm when you first became acquainted with him?

A. I never knew that he was.

Q. Did you ever have any conversation with him in reference to his employment or occupation?

A. I never had until he bo't these goods from us.

Q. Prior to that time had you been informed by him or by Perry Fuller, or had you learned from him or Fuller, that he was, or that he had been, in the employ of P. Fuller or P. Fuller & Co.?

(Obj'd to as to P. Fuller.)

A. No, sir; I never did.

Q. At what place did you first become acquainted with Hayes, & by whom were you introduced to him?

A. I can't tell you that.

Q. Prior to his calling at your store to purchase goods, had you any knowledge as to the pecuniary means or responsibility of Hayes?

A. I don't think I had. I didn't see him when he first came in the store. Fuller was in the store with him once or twice, & I went out & took a drink with them together—I mean while he was here making his purchases, from two or three weeks.

Q. Did you or any member of your firm make any enquiries of Fuller, or have any conversation with him, as to Hayes' means & responsibility, while he was here in 1869?

(Obj'd to.)

A. I did not. I don't know what Mr. Bradford did. I had
417 nothing to do with the credits. I have no knowledge of my own as to whether any enquiries were made by my firm, or any member thereof, as to Hayes' means or responsibility. At that time Mr. Bradford had charge of making such enquiries, unless he was absent, when I would attend to it.

Q. When the goods were shipped, had you any information from your partner, from Hayes, or from Fuller, as to whether any enquiries had been made *by* Fuller as to Hayes' means & responsibility?

(Obj'd to. Question waived.)

Q. Was any arrangement made between your firm & Hayes by which you were to receive Fuller's endorsement on Hayes' notes given for the goods?

A. We did receive Fuller's endorsement. We made the arrangement with P. Fuller that he would endorse the notes. This is what I understood from Mr. Bradford. (Obj'd to what witness understood from Bradford.) I can swear that there was an arrangement by which Fuller was to endorse the notes of Hayes.

Q. Were you present at any interview between Fuller & Bradford when Hayes' means & responsibility were the subject of conversation?

A. I was not. Mr. Peck (I think Charles A. Peck) was the name of

our bookkeeper, who had charge of receiving the notes & the endorsements.

JOHN E. COWLES.

418

419 Mr. HENDERSON. We propose to offer the records of four of the suits commenced in New York about the time of the purchase of these goods, for the purpose of showing the indebtedness of Mr. Fuller at that time, and the reason for his purchasing goods, if he did so do, in others' name; in other words, to show a large indebtedness. They are the certified records of the courts in regard to these suits: First. The suit of Andreas Dole against Perry Fuller, Alexander McDonald, and F. A. De Wolf. Suit instituted; summons issued July 30th, 1869. I will read a memorandum of them; consider them in evidence.

Andreas Dole against Perry Fuller, McDonald and De Wolf; summons, July 30th, 1869; acceptance, dated February 29th, 1868, for $9,138 22; final judgment, November 25th, 1869, $10,210 38; *November 25th*, 1869; institution of the suit, July 30.

Judgment roll in case of Andreas Dold vs. Perry Fuller et al.

The people of the State of New York, by the grace of God free and independent, to all to whom these presents shall come or may concern, greeting:

Know ye that we, having examined the records and files in the office of the clerk of the county of New York and clerk of the supreme court of said State for said county, do find a certain judgment roll [L. S.] there remaining in the words and figures following, to wit:

420 Supreme court.

ANDRE'S DOLD
against
PERRY FULLER, ALEXANDER MCDONALD, & F. A. De Wolf. } Summons. Contract. Com. ser.

To the defendants above named:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscriber, at his office, No. 247 Broadway, corner of Murray street, in the city, county, and State of New York, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of nine thousand one hundred and thirty-eight $\frac{22}{100}$ dollars, with interest from the third day of April, 1868, besides the costs and disbursements of this action.

Dated New York, July 30th, 1869.

RAYMOND & COURSEN,
Plaintiff's Attorneys, No. 247 Broadway, New York City.

CITY & COUNTY OF NEW YORK, *ss:*

Thomas J. Rae, being duly sworn, says that, on the 25th day of August, 1869, he served the annexed summons and complaint upon the defendant, Perry Fuller, therein named, by delivery to, and leaving with,

said Fuller a true copy of said summons and complaint at the
421 St. Nicholas Hotel, in the city of New York.

Deponent further says that he knew, of his own knowledge, the person served as above stated to be the defendant Perry Fuller mentioned in the annexed summons & complaint.

THOMAS J. RAE.

Sworn to before me this 26th day of Aug't, 1869.

HENRY GOLDSMITH,
Notary Public Co. of N. Y.

Supreme court, to be tried in the city and county of New York.

Andres Dold, plaintiff, complains of Perry Fuller, Alexander McDonald, & F. A. DeWolff, (whose Christian name is unknown,) defendants, and states that, on the 29th day of February, 1868, one Frank Chapman made his bill of exchange, dated on that day, upon and directed to the defendants, whereby he requested them, thirty days after the date thereof, to pay the plaintiff or his order the sum of nine thousand one hundred and thirty-eight $\frac{22}{100}$ dollars, value received, and delivered the said bill of exchange to the plaintiff; that the defendants afterwards, and before its maturity, accepted the said bill of exchange, which is past due, and the defendants refuse to pay the same to the plaintiff, who is now the holder thereof.

Wherefore the plaintiff demands judgment against the defendants for nine thousand one hundred and thirty-eight $\frac{22}{100}$ dollars, with interest from April 3rd, 1868, besides costs, &c.

RAYMOND & COURSEN,
Attorneys for Plaintiff, 247 Broadway, N. Y. City.

422 CITY & COUNTY OF NEW YORK, *ss:*

Andres Dold, being duly sworn, says he is plaintiff in the foregoing complaint, and that the same is true of his own knowledge.

ANDRES DOLD.

Sworn to before me July 29th, 1869.

JONATHAN MARSHAL,
Notary Public of New York Co.

(Endorsement:) Supreme court. Andres Dold against Perry Fuller & others. Summons & complaint. Raymond & Coursen, pl'ff's attorneys, 247 Broadway, N. Y. City. Ent'd. Defendants not found. Jas. O'Brien sh'ff.

N. Y. supreme court.

ANDRES DOLD
ag'st
PERRY FULLER & OTHERS.

SIR: Please take notice that we have been retained and appear for the defendants Perry Fuller in the above-entitled action, and that all papers herein may be served on us at our office, No. 3 Pine street, N. Y. City.

Yours, &c.,

423 DOOLITTLE, DAVIS, LYON & NELSON,
Att'ys for Def'ts Fuller.

To RAYMOND & COURSEN,
Pl'ff's Att'ys.

(Endorsement:) N. Y. supreme court. Andres Dold vs. Perry Fuller et al. Notice of appearance. Doolittle, Davis, Lyon & Nelson, def't Fuller's att'ys. (Ent.) Messrs. Raymond & Coursen, pl'ff's att'ys. Rec. Sept. 12, '69.

N. Y. supreme court.

ANDRES DOLD
ag'st
PERRY FULLER ET AL.

At a special term of the supreme court held at the new court house, in the city of New York, this 21st day of September, 1869—present, Hon. Thos. W. Clerke—

On reading and filing the annexed consent of Raymond & Coursen:

Ordered that Ephraim A. Jacob, esq., be substituted as the attorney and counsel of the plaintiff in the above-entitled action.

A copy:

CHA'S E. LOEW, *Clk.*

424 (Endorsement:) N. Y. supreme court. Andres Dold ag'st Perry Fuller et al. (Copy.) Certified copy order of substitution. Ephraim A. Jacob, pl'ff's att'y.

Due service of a copy of the within is hereby admitted.
Dated New York, Sept. 25, '69.

D., D., L. & N.,
Def't Fuller's Att'ys.

N. Y. supreme court, city and county of New York.

ANDRES DOLD
ag'st
PERRY FULLER, ALEXANDER MCDONALD, & F. A. DeWolff.

CITY AND COUNTY OF NEW YORK:

Ephraim A. Jacob, plaintiff's attorney, being duly sworn, deposes and says, that no answer or demurrer herein has been served on the plaintiff's att'y.

EPHRAIM A. JACOB.

Sworn to before me this 25th day of November, 1869.
CHARLES GUENTZER,
Notary Public City & Co'y N. Y.

425 N. Y. supreme court, city and county of New York.

ANDRES DOLD
ag'st
PERRY FULLER, ALEXANDER MCDONALD, & F. A. DeWolff.

The summons and a copy of the complaint having been personally served on the defendant Perry Fuller, on the 25th day of August, 1869, and he having, on the 13th day of Sept., 1869, appeared by Doolittle,

Davis, Lyon & Nelson, his attorneys, and no answer or demurrer having been served on the plaintiff's att'y—

Now, on motion of Ephraim A. Jacob, plaintiff's att'y, it is adjudged that the plaintiff recover of the defendants the sum of ten thousand one hundred and ninety $\frac{12}{100}$ dollars, the amount claimed, with interest, together with twenty $\frac{19}{100}$ dollars, costs and disbursements, amounting, in the whole, to ten thousand two hundred and ten $\frac{31}{100}$ dollars.

Dated New York, November 25th, 1869.

(Endorsement:) 15. N. Y. supreme court. Andres Dold ag'st Perry Fuller, Alexander McDonald, & *T.* A. De Wolff. Judgment roll.
426 Ephraim A. Jacob, pl'ff's att'y. Amount & interest, 10,190 12; costs and disbursements, 20 19—$10,210 31. Filed Nov. 25, 1869, at 12 h. 35 m. L'ew.

All which we have caused, by these presents, to be exemplified, and the seal of our said supreme court to be hereunto affixed.

Witness I, George G. Barnard, justice, at the city of New York, the twelfth day of September, in the year of our Lord one thousand eight hundred and seventy-one, of our independence the ninety-sixth.

[L. S.] CHA'S E. LOEW, *Clerk.*

I, George G. Barnard, presiding justice of the supreme court of the State of New York, for the city and county of New York, do hereby certify that Charles E. Loew, whose name is subscribed to the preceding exemplification, is the clerk of said county of New York, and clerk of said supreme court for said county, duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said supreme court, and that the attestation thereof is in due form.

Dated New York, September 12th, 1871.

GEORGE G. BARNARD.

STATE OF NEW YORK,
City and County of New York, ss:

I, Charles E. Loew, clerk of the supreme court of said State,
427 in and for the city and county of New York, do hereby certify that George G. Barnard, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State, in and for the city and county of New York, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereto set my hand and affixed the seal of the said court this 12th day of September, 1871.

[L. S.] CHA'S E. LOEW, *Clerk.*

We next offer the record of The National Bank of Cherry Valley against Perry Fuller. Summons issued April 17th, 1868; note for $2,000, July 15th, 1867, and indorsed Perry Fuller & Co.; answer of Fuller filed June, 1869; final judgment, March 3rd, 1870, $2,701 27.

Judgment-roll in case of Nat. Bank of Cherry Valley vs. Perry Fuller.

The people of the State of New York, by the grace of God free and independant, to all to whom these presents shall come or may concern, greeting:

Know ye that we, having examined the records and files in the office

of the clerk of the county of New York, and clerk of the supreme court [L. S.] of said State for said county, do find a certain judgment-roll there remaining, in the words and figures following, to wit:

428 *Summons.*

Supreme court.

THE NATIONAL CENTRAL BANK OF CHERRY Valley, plaintiff, *against* PERRY FULLER, DEFENDANT. } For a money demand on contract.

To the said defendant:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscriber, at his office, which is at number 2 Nassau st., in the city of New York, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of two thousand dollars with interest from the 18 day of October, one thousand eight hundred and sixty-seven, besides the costs of this action.

Dated April 17, 1868.

A. J. PERRY,
Plaintiff's Attorney.

Supreme court, county of New York.

THE NATIONAL CENTRAL BANK OF CHERRY Valley, plaintiff, *against* PERRY FULLER, DEFENDANT.

The plaintiff, by A. J. Perry, its attorney, complaining against the defendant, alleges:

First. That the plaintiff is now, and has for a long time past
429 been, a banking corporation doing business at Cherry Valley, in the State of New York, and organized under the laws of said State and the laws of the United States pertaining to national banks.

Second. That the plaintiff, as such banking corporation, holds and owns a certain promissory note made by the defendant, which note is in the words and figures following, to wit:

$2,000. ×] NEW YORK, *July* 15, 1867.

Three months after date I promise to pay to the order of Roswell Hart, two thousand dollars, at the office of Perry Fuller & Co., New York, 251 Broadway. Value received.

(Signed) PERRY FULLER.

(Endorsed:) ROSWELL HART.
JOSEPH PHELAN.

[U. S. internal rev. stamp, 1 dollar, cancelled.]

Third. That there is due plaintiff, as owner and holder of said note, from the defendant as maker thereof, the sum of two thousand dollars,

with interest thereon, from the 18th day of October, 1867, which sum and interest plaintiff claims.

Wherefore plaintiff demands judgment against the said defendant for the sum of two thousand dollars and interest thereon from the 18th day of October, 1867, until judgment is entered.

A. J. PERRY,
Pl'ff's Att'y.

CITY AND COUNTY OF NEW YORK, *ss:*

Andrew J. Perry, being duly sworn, says that he is at-
430 torney for the plaintiff, and as such attorney has in his possession the written instrument upon which this action is brought, and deponent has written instructions from the president of the plaintiff that the whole of such note, with interest, is due, and that said plaintiff is the owner thereof. Deponent, of his own knowledge, knows of the existence, now and for a long time past, *of the existence* of the plaintiff as a banking corporation, doing business as stated in said complaint; deponent further says that, he believes the foregoing complaint to be wholly true, and knows it to be true in part, and that the grounds of his knowledge are above set forth; that the reason why this verfication is made by deponent is, that he has possession of said written instrument for the purpose of this action, and that no officer of said plaintiff having any knowledge of the subject-matter of this action is within the county of New York, as deponent verily believes.

ANDREW J. PERRY.

Sworn before me this 17th day of April, 1868.

MOSES B. MACLAY,
Comm'r of Deeds.

(Endorsement:) Supreme Court. The National Central Bank of Cherry Valley, plaintiff, against Perry Fuller. Copy summons and complaint. A. J. Perry, pl'ff's att'y, 2 Nassau st., New York.

431 Supreme court, city and county of New York.

THE NATIONAL CENTRAL BANK OF CHERRY Valley
against
PERRY FULLER.

The defendant, Perry Fuller, for answer to the complaint in the above-entitled cause, states & shows to this court:

I. He admits the plaintiffs are and were a banking corporation as alleged in the said complaint.

II. He has no knowledge or information sufficient to form a belief whether or not the plaintiffs hold and own the said promissory note, as alleged in said complaint, and for want of such knowledge, &c, information, he denies that the plaintiff was, at the time of commencing this action, or has at any time since, been, or is now, the holder or owner of the promissory note set forth in said complaint; and he also denies upon information & belief that there is now due the plaintiff as owner and holder of said note, the sum of two thousand dollars and interest thereon, as alleged in said complaint, or any sum or amount whatever.

III. For further answer to said complaint, this defendant admits that, on or about the 15th day of July, 1867, this defendant did make his certain promissory note, of the purport and effect set forth in the plaintiff's complaint, and which was the sole and only note of that tenor, purport, or effect which this defendant did make at or about the
432 time alleged; but he expressly states and alleges that said note was made without any consideration therefor, and the said Roswell Hart never paid or gave this defendant any consideration therefor, and this defendant never received any consideration for said note, and he claims that said note is wholly void for want of consideration; and he further alleges, upon information and belief, that if the said plaintiff is the lawful owner or holder of said note, the same came into the hands and possession of the plaintiff after maturity, with full or sufficient knowledge of the want of consideration for said note, to put the plaintiff upon inquiry, by reason whereof he claims and insists that said note is void in the hands of the plaintiff.

And this defendant denies each and every allegation in said complaint contained, not herein before expressly admitted or denied, and prays that the plaintiff's complaint may be dismissed with costs to the defendant.

DOOLITTLE, DAVIS, LYON & NELSON,
Def't's Att'ys, No. 3 Pine st., New York.

CITY AND COUNTY OF NEW YORK, *ss:*

Perry Fuller, being duly sworn, says that the foregoing answer is true of his own knowledge, except as to the matters therein stated on his information and belief, and as to those matters he believes it to be true.

PERRY FULLER.

Sworn to before me this 19th day of June, 1869.
433 HANSON C. GIBSON,
Notary Public N. Y. Co.

(Endorsement:) Supreme court. The National Central Bank of Cherry Valley against Perry Fuller. Copy answer. Doolittle, Davis, Lyon & Nelson, def't's att'y.

At a special term of the supreme court held for the State of New York, at the city hall, in the city of New York, on the 18th day of February, 1870.

Present, Hon. George G. Barnard, justice.

THE NATIONAL CENTRAL BANK OF CHERRY Valley
against
PERRY FULLER.

On reading and filing consent of Messrs. Doolittle, Davis, Lyon & Nelson, attorneys for the defendant, and of A. J. Perry, attorney for the plaintiff, and on motion of plaintiff's attorney, it is ordered this action, and all the issues therein, be, and the same are, referred to Hanson C. Gibson, esq., counsellor at law, to try the same as sole referee; and it is further ordered that said referee report thereon to this court with all convenient speed.

A copy.

CHA'S E. LOEW, *Clk.*

434 (Endorsement:) Supreme court. The National Central Bank of Cherry Valley against Perry Fuller. Certified copy order reference. A. J. Perry, pl'tff's att'y, 2 Nassau street, New York.

Supreme court.

THE NATIONAL CENTRAL BANK OF CHERRY Valley, plaintiff,
against
PERRY FULLER, DEFENDANT.

To the supreme court:

I, Hanson C. Gibson, to whom, by an order of this court, bearing date the 18th day of February, 1870, all the issues in this action were referred as sole referee to try the same and to report thereon to this court, do report that I have been attended by the attorneys and counsel for the respective parties, and have heard their proofs and allegations, and do find as—

MATTERS OF FACT

That the plaintiff is the owner and holder of the promissory note set forth in the complaint, and took and received the same in the ordinary course of its business as a banking corporation before maturity,
435 to wit, on or about the 13th day of August, 1867, paying or giving therefor in money the nominal value thereof less a discount at the rate of seven per centum for the time the said note then had to run to maturity; that the plaintiff has not been paid anything on account of said note, and that the same was made by the defendant.

That there is due the plaintiff from the defendant as maker of the said note the whole amount thereof, to wit, two thousand dollars besides interest which, at the date of this my report, is the sum of three hundred and twenty-eight dollars and sixty-one cents; and I do further find as my—

CONCLUSION OF LAW

That the plaintiff is entitled to recover against the defendant judgment for said sum of two thousand three hundred and twenty-eight dollars and sixty-one cents, besides costs; and I do order judgment accordingly.

All of which is respectfully submitted.

Dated February 23, 1870.

HANSON C. GIBSON, *Referee.*

(Endorsement:) Supreme court. The National Central Bank of Cherry Valley against Perry Fuller. Report.

436 Supreme court, county of New York.

THE NATIONAL CENTRAL BANK OF CHERRY Valley, plaintiff,
against
PERRY FULLER, DEFENDANT.

This action being at issue upon the facts, and having been by an order

of this court, bearing date the 18th day of February, 1870, referred to Hanson C. Gibson, esq., counsellor at law, sole referee to try the same and to report thereon to this court, and the same having been tried by said referee upon the proofs and allegations of the respective parties, and having been by him decided, and he having found in and by his report, bearing date the 23rd day of February, 1870, that the plaintiff is entitled to recover against the defendant judgment for the sum of two thousand three hundred and twenty-eight dollars & sixty-one cents besides costs, and the said costs having been adjusted by the clerk of this court upon due notice thereof: Now, on this third day of March, A. D. 1870, on motion of A. J. Perry, attorney for plaintiff, it is adjudged by the court that the National Central Bank of Cherry Valley, the said plaintiff, do recover of Perry Fuller, the said defendant, the sum of two thousand three hundred and twenty-eight dollars and sixty-one cents, the amount so reported by the said referee,
437 and also the further sum of three hundred and seventy-two dollars and sixty-six cents for his costs and disbursements of this action as adjusted, amounting altogether to the sum of two thousand seven hundred & one dollars & twenty-seven cents; and that the plaintiff have execution therefor.

(Endorsement:) 7. Supreme court. E. The National Central Bank of Cherry Valley against Perry Fuller. Judgment-roll. A. J. Perry, pl'ff's att'y, 2 Nassua st. Damages, $2,328 61; costs, &c., 372 66—$2,701 27. D & N. Filed March 3, 1870, at 10 h'rs & 31.

All which we have caused by these presents to be exemplified, and the seal of our said supreme court to be hereunto affixed.

Witness I, George G. Barnard, justice, at the city of New York, the twelfth day of September, in the year of our Lord one thousand eight hundred and seventy-one, of our independence the ninety-sixth.

[L. S.] CHA'S E. LOEW, *Clerk.*

I, George G. Barnard, presiding justice of the supreme court
438 of the State of New York, for the city and county of New York, do hereby certify that Charles E. Loew, whose name is subscribed to the preceding exemplification, is the clerk of the said county of New York, and clerk of said supreme court for said county, duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said supreme court, and that the attestation thereof is in due form.

Dated New York, September 12th, 1871.

GEORGE G. BARNARD.

STATE OF NEW YORK,
City and County of New York, ss:

I, Charles E, Leow, clerk of the supreme court of said State, in and for the city and county of New York, do hereby certify that George G. Barnard, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State, in and for the city and county of New York, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereto set my hand and affixed the seal of the said court, this 12th day of September, 1871.

[L. S.] CHA'S E. LOEW, *Clerk.*

We then offer the record of the suit in the New York supreme court,

Howel, Southwick and others, against Fuller, DeWollf, and McDon-
439 ald. Summons issued March 14th, 1868; acceptance, August 1st, 1867, for $3,174; credit of $1,000; final judgment July, 1868, for $2, 438 87.

Judgment-roll in case of Hall et al. vs. Fuller et al.

The people of the State of New York, by the grace of God free and independent, to all to whom these presents shall come or may concern, greeting:

Know ye that we, having examined the records and files in the office of the clerk of the county of New York, and clerk of the supreme court of said State for said county, do find a certain judgment-roll there remaining, in the words and figures following, to wit:

[SEAL.]

Summons.

N. Y. supreme court, city and county of New York.

WILLIAM A. HALL, HENRY C. SOUTHWICK, Jesse St. John, Adolphus F. Carter, Augustus Kirkham, & Mathew Bunker, plaintiffs, *against* PERRY FULLER, FREDERICK A. DE WOLF, Alexander McDonald, & Benjamin P. McDonald, defendants.	For a money demand on contract. Com. not served.

To the defendants & each of them:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the city and county of New York, at the city hall, in the said city, and to serve a copy of your answer to the said complaint on the subscribers, at their office, No. 271 Broadway, New York City, within twenty days
440 after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of two thousand one hundred and seventy-four dollars and thirteen cents, with interest, from the fourth day of December, one thousand eight hundred and sixty-seven, besides the costs of this action.

Dated N. Y., March 14, 1868.

STEWART, RICH & WOODFORD,
Plaintiffs' Attorney.

(Endorsement:) N. Y. supreme court. William A. Hall et al v. Perry Fuller et al. (N'ty.) Summons. Stewart, Rich & Woodford, pl'ff's att'ys, 271 Broadway. Gumbleton. Defendants not found. James O'Brien, sh'ff.

Notice of appearance.

N. Y. supreme court, city and county of New York.

WILLIAM A. HALL, HENRY C. SOUTHWICK, Jesse St. John, Adolphus A. Carter, Augustus Kirkham, & Matthew Bunker, plaintiffs,
against
PERRY FULLER, FREDERICK A. DE WOLF, Alexander McDonald, and Benjamin P. McDonald, defendants.

441 SIR: Please to take notice that the defendants above named, appear in this action, and that we are retained as attorneys for them therein, and demand that a copy of the complaint & all papers in this action be served on us at our office, No. 137 Broadway, New York.

May 6th, 1868.

Yours, &c.

COX & RISLEY,
Defendants' Attorneys, No. 137 Broadway.

To Messrs. STEWART, RICH & WOODFORD, Esq's,
Plaintiffs' Attorneys, 271 Broadway.

(Endorsement:) Ent. N. Y. supreme court. William A. Hall et al. against Perry Fuller et al. Notice of appearance of defendants' attorney for defendants, 137 Broadway. Rec'd May 6th, 1868.

N. Y. supreme court, city and county of New York.

WILLIAM A. HALL, HENRY C. SOUTHWICK, Jesse St. John, Adolphus F. Carter, Augustus Kirkham, & Mathew Bunker, pl'ffs,
against
PERRY FULLER, FREDERICK A. DE WOLF, Alexander McDonald, & Benjamin P. McDonald, def's.

The complaint of the above-named plaintiffs respectfully shows that, on the first day of August, 1867, at the city of New York,
442 the defendants Alexander McDonald & Benjamin P. McDonald, under their firm-name of A. McDonald & Brothers, made and delivered to the plaintiffs their bill of exchange in writing, of which the following is a copy:

$3,174 13.] NEW YORK, *Aug'st 1st*, 1867.

Four months after date pay to the order of Hall, Southwick & Co., thirty-one hundred & seventy-four $\frac{13}{100}$ dollars, value received, and charge the same to account of

A. McDONALD & BRO'S.

To PERRY FULLER & Co.,
251 *Broadway New York.*

Dated on that day, and directed the same to the defendants, Perry

Fuller and Frederick A. De Wolf, under the firm-name of Perry Fuller & Co.

(Written across the face:) Accepted Aug. 1, '67.
PERRY FULLER & CO.

II. That then and there the defendants Perry Fuller and Frederick A. De Wolf, under their firm-name of Perry Fuller & Co., upon sight thereof accepted said bill.

III. That, at maturity, the same was duly presented to the defendants Perry Fuller and Frederick A. De Wolf, under their firm-name of Perry Fuller & Co., for payment, but was not paid, and was therefore duly protested for non-payment; of all which due notice was given to the defendants.

IV. That no part of the same has been paid, with the exception of one thousand dollars, and there is now due and owing to these plaintiffs, thereon, the sum of two thousand one hundred and seventy-four dollars and thirteen cents, with interest from the fourth day of December, 1867.

Wherefore the plaintiffs demand judgment against said defend-
443 ants for the said sum of two thousand one hundred and seventy-four dollars and thirteen cents, with interest thereon from the fourth day of December, 1867, besides the costs of this action.

STEWART, RICH & WOODFORD,
Pl'ffs' Att'ys, 271 Broadway.

CITY AND COUNTY OF NEW YORK, *ss:*

William A. Hall, one of the plaintiffs in this action, being duly sworn, says that he read the foregoing complaint, and knows the conten's thereof, and that the same is true to his own knowledge, except as to the matters therein stated on information & belief, and as to those matters he believes it to be true.

WILLIAM A. HALL.

Sworn to before me, this 25th day of March, 1868.
WASH. R. NICHOLS,
Notary Public, N. Y. Co.

(Endorsement:) N. Y. supreme court. William A. Hall et al., pl'ffs, against Perry Fuller et al., def'ts. Copy complaint. Stewart, Rich & Woodford, attorneys for pl'ffs, 271 Broadway, New York.

Service of copy of the within complaint admitted this 9th day of May, 1868.

COX & RISLEY,
Def'ts' Att'ys

444 N. Y. supreme court, city and county of New York.

WILLIAM A. HALL ET AL.
against
PERRY FULLER ET AL.

CITY AND COUNTY OF NEW YORK, *ss:*

Washington R. Nichols, being duly sworn, says that he is the managing attorney in the office of Stewart, Rich & Woodford, the attorneys for the plaintiffs herein, and has had the conduct and management of

this case, as such managing attorney; that no answer or demurrer has been received by or served on the plaintiffs' attorneys from or by the defendants or either of them in above action.

WASH. R. NICHOLS.

Sworn to before me this 14th day of July, 1868.

W. H. WILLIAMS,
Notary Public, N. Y. Co.

N. Y. supreme court, city and county of New York.

WILLIAM A. HALL, HENRY C. SOUTHWICK, Jesse St. John, Adolphus F. Carter, Augustus Kirkham, and Mathew Bunker,
against
PERRY FULLER, FREDERICK A. DE WOLF, Alexander McDonald, and Benjamin P. McDonald.

This action having been commenced by the issue of a summons herein, and the defendants having appeared, by Cox & Risley, esq's, their attorneys, and demanded a copy of the complaint, and the same
445 having been served on said Cox and Risley, the defendants' attorneys, and no answer or demurrer having been served on the plaintiffs' attorneys—

Now, on motion of Stewart, Rich & Woodford, esq's, the plaintiffs attorneys, it is ordered and adjudged that the plaintiffs, William A. Hall, Henry C. Southwick, Jesse St. John, Adolphus F. Carter, Agustus Kirkham, and Matthew Bunker, do recover of the defendants, Perry Fuller, Frederick A. DeWolf, Alexander McDonald, and Benjamin P. McDonald, two thousand two hundred and sixty-seven dollars and thirteen cents, the amount claimed, with interest, together with one hundred and seventy-one dollars and seventy-four cents, costs and disbursements, amounting in the whole to two thousand four hundred and thirty-eight dollars and eighty-seven cents.

(Endorsement:) N. Y. supreme court. William A. Hall et al., pl'ffs, against Perry Fuller et al., det'ts. Judgment-roll. Stewart, Rich & Woodford, attorneys for plaintiffs, 271 Broadway, New York. Am't $2,267 13; costs, 171 74—2,438 87.

(Endorsed:) Filed July 15, 1868 at 2 h's 56 m. R. Sl.

446 All which we have caused by these presents to be exemplified, and the seal of our said supreme court to be hereunto affixed.

Witness I, George G. Barnard, justice, at the city of New York, the twelfth day of September, in the year of our Lord one thousand eight hundred and seventy-one, of our independence the ninety sixth.

[L. S.] CHA'S E. LOEW, *Clerk.*

I, George G. Barnard, presiding justice of the supreme court of the State of New York, for the city and county of New York, do hereby certify that Charles E. Loew, whose name is subscribed to the preceding exemplification, is the clerk of the said county of New York, and clerk of said supreme court for said county, duly elected and sworn and that full faith and credit are due to his official acts. I further cer-

tify that the seal affixed to the exemplification is the seal of our said supreme court, and that the attestation thereof is in due form.

Dated New York, September 12th, 1871.

GEORGE G. BARNARD.

STATE OF NEW YORK,
City and County of New York, ss:

I, Charles E. Loew, clerk of the supreme court of said State, in and for the city and county of New York, do hereby certify that George G. Barnard, whose name is subscribed to the preceding certificate is presiding justice of the supreme court of said State, in and for the city and county of New York, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

447 In testimony whereof, I have hereto set my hand and affixed the seal of the said court this 12th day of September, 1871.

[L. S.] CHA'S E. LOEW, *Clerk.*

We then offer The First National Bank of Attica, New York, against Fuller and De Wollf. Summons issued August 2nd, 1867; signed Perry Fuller and Co., January 1st, 1867, for $4,500, payable to Isaac Coleman, died March 4th, 1867. Sent to referee, and final judgment against defendant, June, 1870, for $944 66; that is, including $385 costs.

Judgment-roll in case of First National Bank of Attica vs. Fuller et al.

The people of the State of New York, by the grace of God free and independent, to all to whom these presents shall come or may concern, greeting:

Know ye that we, having examined the records and files in the office of the clerk of the county of New York, and clerk of the supreme court of said State for said county, do find a certain judgment-roll

[L. S.] there remaining, in the words and figures, following, to wit;

Summons.

N. Y. supreme conrt.

THE FIRST NATIONAL BANK OF ATTICA, plaintiff,
against
PERRY FULLER AND ALEXANDER MCDONALD, defendant.
} For a money demand on contract.

To the defendants and each of them:

You are hereby summoned and required to answer the com-

448 plaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers, at their office, No. 74 Wall st., New York City, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of forty-five hundred dollars, with interest from the 3d day of July one thousand eight hundred and sixty-seven, besides the cost of this action.

Dated Aug. 2nd, 1867.

EMERSON & GOODRICH,
Plaintiff's Attorneys.

Supreme court, city and county of New York.

THE FIRST NATIONAL BANK OF ATTICA
ag'st
PERRY FULLER AND ALEXANDER MCDONALD.

The plaintiff, by Emerson & Goodrich, its attorneys, complains of the defendants, & alleges—

That the plaintiff, at the time hereinafter named, was & now is, a corporation duly formed as a national bank under & pursuant to the laws of the United States.

They further allege, on information and belief, that, at the city of New York, on or about the 1st day of January, 1867, the defendants who were then partners in business under the firm name of Perry Fuller & Co., for a valuable consideration, made their certain promissory note in the words & figures following:

449 $4,500 00.] NEW YORK, *January 1st*, 1867.

Six months after date we promise to pay to the order of Isaac Coleman forty-five hundred $\frac{}{100}$ dollars at our office, No. 251 Broadway, N. Y. Value received.

PERRY FULLER & CO.

[U. S. int. rev. st. $2 25 canc'd.]

That thereafter the said Isaac Coleman, payee of said note, died, leaving a will by which M. M. Mitford was appointed the sole executor thereof, who has since duly qualified as such executor.

That thereaafter, and before the maturity of said note, the said Mitford, as such executor, for a valuable consideration, duly endorsed said note, whereupon the same, before its maturity, for a valuable consideration, became & now is the property of the plaintiff, who is the legal holder & owner thereof & the real party in interest in this action.

That there is now due the plaintiff upon said note the sum of forty-five hundred dollars, & interest thereon from July 3rd, 1867, for which sum the plaintiff demands judgment with costs.

EMERSON & GOODRICH,
Pl'ff's Att'ys 74 Wall St.

CITY & COUNTY OF NEW YORK, *ss:*

William W. Goodrich, one of the plaintiff's attorneys, being duly sworn, says the foregoing complaint is true, to his own knowledge, except as to the matters therein stated on information and belief,
450 and as to those matters he believes it to be true. That the action is founded upon a written instrument for the payment of money only, which is in the possession of deponent.

That the plaintiff is not within this county, for which reason deponent makes this affidavit.

That the grounds of deponent's knowledge and belief are the said note and letters of the defendants.

W'M W. GOODRICH.

Sworn to before me, this 2nd day of Aug., 1867.
W. H. H. JOHNSON,
Not Pub. N. Y. Co.

(Endorsement:) N. Y. supreme court, The N. B'k of Attic'a vs. Perry

Fuller & al. Sum's & compl't. Emerson and Goodrich, atty's for pl'ff, 74 Wall st., N. Y.

In the supreme court, city & county of New York.

THE FIRST NATIONAL BANK OF ATTICA
vs.
PERRY FULLER AND ALEXANDER MCDONALD.

Come now the defendants, by Cox & Risley, their attorneys, and, answering the complaints of the plaintiff herein, severally deny, each for himself, that he has any knowledge or information sufficient to form a belief as to the truth of any of the allegations in the said com-
451 plaint contained, except as to those hereinafter specicifically admitted or denied.

They admit that, on the 1st day of January, 1867, they were partners doing business under the firm-name of Perry Fuller & Co., and that the said Coleman died, as is in the complaint in that behalf alleged.

The defendants further deny that they made the promissory note alleged in the complaint, or that they ever received any valuable or lawful consideration therefor, or that there is now due to the said plaintiff thereon any sum of money whatever.

COX & RISLEY,
Attorneys for Defendants, 137 *Broadway*, *N. Y.*

CITY AND COUNTY OF NEW YORK, *ss:*

Perry Fuller and Alexander McDonald, being severally duly sworn, each for himself, says he has read the foregoing answer, and knows the same to be true, of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes the same to be true.

PERRY FULLER.
ALEXANDER McDONALD.

Sworn to before me October 4th, 1867.

SYLVESTER LAY,
Notary Public, *N. Y. C.*

(Endorsement:) N. Y. supreme court. The First National Bank
452 of Attica vs. Perry Fuller et al. Answer. Rec. Oct. 4, '67.

GENTLEMEN: Please take notice that the within is a copy of the defendant's answer in the above-entitled action.

Dated N. Y. Oct. 4, 1867.

Yours, &c.,

COX & RISLEY,
Att'ys for Def's, 137 *Broadway.*

To Messrs. EMERSON & GOODRICH,
Atty' for Pl'ff's, 74 *Wall st.*

Supreme court, city and county of New York.

THE FIRST NATIONAL BANK OF ATTICA
against
PERRY FULLER & ANOTHER.

At a circuit term held at the city hall, in the city of New York, on the 19th day of June, A. D. 1868—present, Hon. C. R. Ingalls—

On reading & filing the annexed consent, & on motion of Thomas M. Wheeler, for plaintiff,

Ordered that the above-entitled action be referred to Eugene H. Pomeroy, esq., counsellor at law, to hear and determine the whole issues therein.

C. R. INGALLS,
Jus. Supr. Court.

Supreme court, city & county of New York.

THE FIRST NATIONAL BANK OF ATTICA
against
PERRY FULLER AND ANOTHER.

453 It is hereby stipulated between the parties hereto, that the above-entitled action be referred to Eugene H. Pomeroy, esq., counsellor at law, to hear and determine the whole issues therein, and that an order be entered accordingly.

New York, June 19, 1868.

EMMERSON & GOODRICH,
Att'ys for Plff's.
COX & RISLEY, *Def's Att'ys.*

(Endorsement:) N. Y. supreme court. The 1st National Bank of Attica ag'st Perry Fuller & another. Order of reference. Emerson, Goodrich & Wheeler, att'ys for pl'ffs, 59 Wall st., N. Y.

Supreme court, city and county of New York.

THE FIRST NATIONAL BANK OF ATTICA
against
PERRY FULLER AND ALEXANDER MCDONALD.

To the supreme court of the State of New York:

I, Eugene H. Pomeroy, to whom, by the order of this court, dated June 19th, 1868, it was referred to hear and determine the whole issues herein, do respectfully report, as matters of fact, after heard the proofs and testimony on the part of the plaintiff and defendants, respectively, and the arguments of counsel, as follows:

That the plaintiff was, at the time of the making and maturity of the note in suit, a corporation.

454 That the defendants were copartners, doing business under the firm-name of Perry Fuller & Co.

That, on the 1st day of January, 1867, the defendants made their certain promissory note, dated on that day, whereby they promised to pay to the order of one Isaac Coleman, six months after date, $4,500.

That said note was delivered to Isaac Coleman, who, some time in the month of January, 1867, deposited it with the plaintiffs, The First National Bank of Attica, unendorsed and received a loan thereon of one hundred and fifty dollars.

That thereafter, and on the 4th day of March, 1867, Isaac Coleman, the payee in said note named, died, leaving a will, whereby, among other things, he appointed one Marshall M. Milford his executor, who, on the 30th day of March, 1867, duly qualified as such executor.

That thereafter, and on the 12th day of April, 1867, Marshall M. Milford, as such executor, obtained from the plaintiffs a further loan of

said promissory note of $200, and then endorsed said note to the bank under the following agreement: That the note should be assigned to the bank in consideration of the previous loan of $150 and the then present loan of $200; that the bank should further loan upon it sums of money as needed by said executor; and that, upon the maturity of the note, the plaintiffs should collect said note, and, after repaying themselves the amount loaned on the note, with regular bank interest, they
455 should pay over to said Milford, as executor, the balance.

That thereafter, and on the 11th day of May, 1867, the said Milford obtained a further loan from the bank of $200, making in all the sum of $550 00 loaned by said plaintiffs on said note.

That the regular bank interest, as agreed upon by counsel, is six per centum per annum.

That said promissory note was made and delivered to said Coleman to take up a draft of like amount drawn by the defendants on H. E. McKee & Co.

That said draft was drawn and delivered to Isaac Coleman, with the understanding and agreement that if the said Coleman carried out a certain contract, made between the defendants and said Coleman, that then the same would be paid.

That the note in suit was given to take up the said draft when it became due, at which time Coleman had failed to carry out said contract, and never carried out the same.

That said promissory note was wholly without consideration as between said defendants and Isaac Coleman, the payee therein named.

And I do find, as a matter of law, that the plaintiffs are the bona-fide owners and holders of the promissory note in this action to the extent of $550, with interest at six per cent.

That the plaintiffs, The First National Bank of Attica, have
456 judgment against the defendants, Perry Fuller and Alexander MacDonald, for the sum of $550 00, with 6% interest to be computed, besides their costs and disbursements.

Dated June 23d, 1870.

EUGENE H. POMEROY, *Referee.*

(Endorsement:) N. Y. supreme court. The First National Bank of Attica against Perry Fuller and Alexander McDonald. Findings of law and fact. Eugene H. Pomeroy, referee, 20 Nassau st., New York.

N. Y. supreme court.

THE FIRST NATIONAL BANK OF ATTICA
vs.
PERRY FULLER AND ALEXANDER MCDONALD.

This cause having been referred to Eugene H. Pomeroy, esq., to hear and determine the same, an' his report having been filed, wherein he finds to be due from the defendants to the plaintiff the sum of five hundred and fifty dollars, now, on motion of Emerson & Goodrich, plaintiff's attorneys, it is adjudged that the plaintiff do recover of the defendants the sum of $559 10, being the amount so reported due, with interest at six per cent. per annum, and $385 56 costs and disbursements, amounting in the whole to nine hundred and forty-four $\frac{66}{100}$, ($944 66.)

457 (Endorsement:) 4. N. Y. supreme court. The First National Bank of Attica vs. Perry Fuller and Alexander McDonald. B.

Judgment roll. Emerson & Goodrich, pl'ff's att'ys. Damages & int., $559 10; costs, &c., 385 56. Total, $944 66. D. S. H.
(Endorsed:) Filed Oct. 4, 1870, at 11 h'rs & 50 m.

All which we have caused by these presents to be exemplified, and the seal of our said supreme court to be hereunto affixed.

Witness I, Geo. G. Barnard, justice, at the city of New York, the twelfth day of September, in the year of our Lord one thousand eight hundred and seventy-one, of our independence the ninety-sixth.

[L. S.] CHA'S E. LOEW, *Clerk.*

I, George G. Barnard, presiding justice of the supreme court of the State of New York, for the city and county of New York, do hereby certify that Charles E. Loew, whose name is subscribed to the preceding exemplification, is the clerk of the said county of New York, and clerk of said supreme court for said county, duly elected and
458 sworn, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to the exemplification is the seal of our said supreme court, and that the attestation thereof is in due form.

Dated New York, September 12th, 1871.

GEORGE G. BARNARD.

STATE OF NEW YORK,
City and County of New York, ss:

I, Charles E. Loew, clerk of the supreme court of said State, in and for the city and County of New York, do hereby certify that George G. Barnard, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State, in and for the city and county of New York, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 12th day of September, 1871.

[L. S.] CHA'S E. LOEW, *Clerk.*

459 Offer the deposition of Miss Aggy Bingham, telegraphic operator at New York.

Deposition of Miss Aggy Bingham.

Deposition of Aggy Bingham, taken before J. Breek Perkins, a notary public within and for the county of Monroe, in the State of New York, on the 11th day of June, 1870.

Miss AGGY BINGHAM, being carefully examined and duly sworn to testify the truth, the whole truth, and nothing but the truth in answer to inter'ogatories propounded by the counsel of the defendants, deposeth and saith, as follows:

I reside in Fairport, Monroe County, N. Y. I am a telegraph operator at Fairport, in the office of the Western Union Telegraph Company. I was an operator in that office during the months of June, July, August, & September, 1869. I knew W'm Hayes, the plaintiff in this action, at that time. The office at Fairport is in the station-house of the New York Central R. R. Co. The ladies' room is on one side, and the gentlemen's on the other, and there are openings into these two rooms where messages are received. I received and dispatched mes-

sages on the lines of the Western Union Tel. Co. at that office.
460 That is the only office in town. I was the sole operator at that office.

Question. Did you see the plaintiff write messages at your office, during June, July, August, & September, 1869.

(Objected to by the plaintiff's counsel, as incompetent and immaterial.)

Answer. I did. The plaintiff sent and received quite a number of messages that summer. I should think about eighty, probably, during those four months. His telegraphic correspondence was with different persons. It was principally with Perry Fuller.

Question. What other persons did he correspond with by telegraph?

(Objected to as immaterial.)

Answer. Davis, of New York; Frederick A. DeWolf, Jenner, & Langley; do not recollect any one else. I saw a man at Fairport once, whom the plaintiff called Fred. The correspondence of the plaintiff was between New York and Fairport. Telegraphs were sent to the Albemarle and St. Nicholas Hotel, N. Y. Thomas Adamson delivered the company's messages at Fairport at that time. Had no other
461 deliverer of messages. I myself delivered messages to Mr. Prichard for Mr. Hayes. Do not remember how many; not a great many. Sent some messages out to his father's house. I was subpœnaed to produce messages from my office.

Defendant's counsel requests the witness to produce the messages mentioned in the subpœna. Witness refuses to produce them unless ordered by the commissioner so to do.

The counsel for the plaintiff objects to such order being made, on the ground that *as* foundation has been laid for such order, and that a commissioner has no power to make any such order. And, thereupon, on the request of the counsel of the defendants, it is ordered, and I hereby direct, that the above-named witness, Miss Bingham, produce in court before me the messages or telegrams, and papers described and indicated in the above referred to subpœna, and that a certified copy of this order be served upon the witness.

This order is made by virtue of a commission issued to me to take the testimony of the said witness and others in action pend-
462 ing in the United States circuit court of the State of Missouri, between William Hayes, plaintiff, and George H. Rea and another, defendants, under the seal of the clerk of said court, and the stipulation annexed thereto, dated May 11th, 1870.

J. BRECK PERKINS,
Commissioner.

A certified copy of the above order is hereupon delivered to the witness.

(Witness is shown paper and states:) I have seen the plaintiff write messages at our office. He has delivered them to me after. I have seen him write them many times. In my opinion that paper is in the plaintiff's handwriting. (Paper is marked No. 1.)

(Witness is shown papers and says:) These are all telegrams, and are in the handwriting of the plaintiff, and signed by him.

(The above messages are shown to witness, and she thereupon states:) All the above messages were received at the Fairport office of the Western Union Company, and were sent over their lines to the persons to whom they were directed.

(Witness is shown papers and says:) These are all in my hand-
463 writing; these are telegrams. They were sent over the lines of

the Western Union Telegraph Company, and were received at the office at Fairport. I wrote these papers as the messages were received on the lines; they were received at the dates upon them. I made duplicates of them myself, in ink; I have none of these duplcates in my possession; I delivered the duplicates to Mr. Hayes. These telegrams were received at the dates marked on them. They are dated as follows: June 3d, June 5th, June 23d, 1869.

(The following papers are shown witness, dated June 17th, June 17th, June 19th, June 19th, June 21st, June 21st, 1869, and she says:) These are in the handwriting of a young lady who was operator then while I was away. I know her handwriting. All these papers are kept on file at our office. I found them on file there.

(Witness is shown additional papers, dated July 8th, July 13th, July 16th, July 30th, 1869, and she says:) These papers are in the handwriting of, and signed by, the plaintiff.

(Witness is shown a paper, dated July 29th, 1869, on blank
464 No. 1, and says:) This is in my handwriting; I think I wrote and signed at the request of the plaintiff. He told me to write what is on there.

(Witness is shown further papers, dated July 6th, July 8th, July 12th, July 14th, July 15th, July 16th, July 23d, July 23d, July 29th, July 28th, July 28th, Sept. 7th, 1869, and says:) These are all in my handwriting; they were sent on the lines of the company, and I wrote them down as received on the lines. I made duplicates of these messages and delivered them to Mr. Hayes. These messages have been kept on the files of the office since they were received.

(Defendant's counsel offers in evidence telegrams, dated June 3d & June 5th, 1869, dated Washington, D. C., to William Hayes, Fairport, N. Y., one signed Perry Fuller and the other P. Fuller. Pl'ff's counsel objects to both as incompetent and immaterial. Telegrams are read in evidence, and marked Def't's Ex's, No. 1 & No. 2.)

The witness says: These telegrams are both in my handwriting; duplicates were made by me and delivered to the plaintiff.

(Defendant's counsel offers in evidence message from the plaint-
465 iff to Perry Fuller, dated at Fairport, June 17, 1869.) Plaintiff's counsel objects to message as incompetent and immaterial. The message is read in evidence, and marked De'f't's Ex. No. 3.)

The witness says: This message was delivered to me by the plaintiff at the date that appears on it, and sent over our lines to the person to whom it is directed. It is the plaintiff's handwriting. The 17th of June, 1869, was Thursday.

(Defendant's counsel offers in evidence message from P. Fuller, dated June 17th, 1869, at New York, to William Hayes, and also one from P. Fuller & Co., of same date. Plaintiff's counsel objects to each of such messages as immaterial and incompetent. Messages are received and read in evidence, & marked Def't's Ex' Nos. 4 & 5.)

Witness says: These were received on our lines at our office; No. 4 was received at 8.35 p. m., June 17th.

(Defendant's counsel offers in evidence message from W'm Hayes to Perry Fuller, dated June 18th, 1869. Plaintiff's counsel objects as immaterial and incompetent. Message received and read in evidence, and marked Ex. No. 6.)

Witness further says: No other messages than those marked
466 No. 4 & 5 were received for the plaintiff at our office that day, June 17th.

(Ex. No. 3 is shown witness and she says:) No other message than that was sent by the plaintiff to Perry Fuller on that day.

(Ex. No. 6 is shown witness and she says:) No other message than that was sent by plaintiff to Perry Fuller on the day that is dated.

(Defendant's counsel offers in evidence messages from P. Fuller to Hayes, dated June 19, 1869; from Hayes to Perry Fuller, dated June 19, 1869; from plaintiff to Perry Fuller, dated June 21, 1869; from P. Fuller to W'm Hayes, dated June 21st, 1869; from P. Fuller & Dole to William Hayes, dated June 21st, 1869; from William Hayes to Perry Fuller, dated June 21st, 1869; one signed Fred., to plaintiff, dated June 19th, 1869; from Hayes to F. A. De Wolf, dated June 21st, 1869; from F. A. De Wolf to plaintiff, dated July 23d, 1869; from W'm Hayes to A. C. Davis, dated July 8th, 1869; from A. C. Davis to plaintiff, July 8th, 1869; from Perry Fuller to plaintiff, dated July 12th, 1869; from P. Fuller to plaintiff, dated July 15th, 1869; one from plaintiff to Perry Fuller, dated July 16th, 1869; one signed Fred., to plaintiff, dated July 28th, 1869; from P. Fuller to plaintiff, dated July 28th, 1869; from
467 P. Fuller to plaintiff, dated July 29th, 1869; from plaintiff to Perry Fuller, dated July 29th, 1869; from plaintiff to Fred. A. De Wolf, dated July 30th, 1869; from C. W. Jenner to plaintiff, dated Sept. 4th, 1869. The witness says:) These are the messages already described & identified by me, and were received and sent at the hour and day marked upon them respectively.

(The plaintiff's counsel admits that the messages thus offered in evidence are those formerly shown to witness and proved and identified by her, and that those addressed to the plaintiff were delivered to him. Plaintiff's counsel objects to each and every one of the messages thus offered in evidence, and to each one separately, on the ground that each and every of such messages are incompetent and immaterial; and to that marked Ex. No. 15 as being from F. A. DeWolf, and not binding either party, and to that marked No. 17, on the ground that it being from A. C. Davis, cannot bind either party, and being from one of the plaintiff's counsel is privileged, and to that marked No. 26 as being from third party, does not bind the parties to this action. The exhibits are received and read in evidence, and are marked respectively in the order
468 they were produced, Defendants' Ex's No. 7 to No. 26, both inclusive.)

(Witness is shown memorandum on back of Ex. No. 25, and says:) I recollect sending that memorandum to him, and it refers to Ex. No. 23. The memorandum also refers to Ex. No. 22.

On being cross-examined the witness testified:

I have no personal acquaintance with the plaintiff—never was introduced to him. Have been in the telegraph business nearly two years—not quite two years. Don't make a practice of noticing the handwriting of those who come to the office to send messages. I know Ex. No. 16 is in the handwriting of the plaintiff; would swear to it. Don't remember the circumstance of his sending it, or coming to the office to write it. I don't recollect when I saw the plaintiff last. Have not seen him since January third. I have not seen him since September last. Mr. Cooke has been to see me as to what I should testify here. Mr. Hurlburt saw me about it. I did not show any of these dispatches to Mr. Cooke or Mr. Hurlburt before I produced them here.

(Ex. No. 24 is shown witness and she says:) I think the plaintiff
469 was just starting for N. Y., and, being in a hurry, told me to write this dispatch for him. "I will come over," means I will come

down to N. Y. I have other messages in the office sent between Perry Fuller and the plaintiff. I was not subpœnaed to bring them, and therefore did not.

ABBIE G. BINGHAM.

It is stipulated by the plaintiff's counsel that the witness above produced and sworn is the party named in the commission as Aggie Bingham in the stipulation annexed thereto, and it was agreed by the respective counsel that any objection on account of the difference in name is waived.

Exhibits to Miss Aggy Bingham's deposition, numbered from 1 *to* 26.

Ex. No. 1.

Exhibit No 1 in the foregoing deposition is in the words and figures following, to wit:

June 3d, '69. Washington, D. C. To William Hays, Fairport, N. Y. Meet me at St. Nicholas, New York, Monday at ten (10.) An answer. Perry Fuller, (cor. K 12 st.) 6.50 p. m.

Ex. No. 2.

Exhibit No. 2 in the foregoing deposition is in the words and figures following, to wit:

June 5th, '69. From Washington, D. C. To W'm Hays, Fairport, N. Y. Do not fail to be at St. Nicholas Hotel, Monday. P. Fuller, C. V. U. G. 2.50 p. m.

Ex. No. 3.

470 Exhibit No. 3 in the foregoing deposition is in the words and figures following, to wit:

Fairport, June 17, 1869. To Perry Fuller, St. Nicholas Hotel, New York. Just arrived home; cannot possibly leave here before Monday. Arrange with Dole. W'm Hayes.

Ex. No. 4.

Exhibit No. 4 in the foregoing deposition is in the words and figures following, to wit:

No. 3. Fr. New York, June 17, 1869. W'm Hayes. Fairport, N. Y. You must come. We commence suit on C. S. to-morrow. Do not fail. Answer. P. Fuller, St. Nicholas Hotel. 14, Fee collect, 62. 5.35 p. m.

Ex. No. 5.

Exhibit No. 5 in the foregoing deposition is in the words and figures following, to wit:

No. 2. 17th, 1869. From New York. William Hayes, Fairport. You must come at once. Dole & Willis here. Answer. P. Fuller & Co., St. Nicholas Hotel.

Ex. No. 6.

Exhibit No. 6 in the foregoing deposition is in the words and figures following, to wit:

Fairport, June 18th, 1869. To Perry Fuller, St. Nicholas Hotel, New York. Wife sick. Cannot trust to leave her positively before Monday. William Hayes.

Ex. No. 7.

Exhibit No. 7 in the foregoing deposition is in the words and figures following, to wit:

Fr. New York, June 19, 1869. W'm Hayes, Fairport. You
471 must be here Monday morning. Answer. P. Fuller, St. Nicholas Hotel.

Ex. No. 8.

Exhibit No. 8 in the foregoing deposition is in the words and figures following, to wit:

Fairport, June 19th, 1869. To Perry Fuller, St. Nicholas Hotel, New York. Will be at St. Nicholas Monday noon. William Hayes.

Ex. No. 9.

Exhibit No. 9 in the foregoing deposition is in the words and figures following, to wit:

Fairport, N. Y., 21, 1869. To Perry Fuller, St. Nicholas Hotel, New York. Sickness of wife detains me. Will be there Wednesday morning. William Hayes.

Ex. No. 10.

Exhibit No. 10 in the foregoing deposition is in the words and figures following, to wit:

New York, 21, 1869. To W'm Hayes, Fairport, N. Y. You must come without fail. I cannot hold. I cannot hold the parties back long. D. is mad. Come first train. You are ruining all by keeping away—me and all business. Answer on receipt. P. Fuller.

Ex. No. 11.

Exhibit No. 11 in the foregoing deposition is in the words and figures following, to wit:

New York, June 21, 1869. W'm Hayes, Fairport, New York. You must be here in the morning. Wallace won't wait. F. Fuller & Dole.

Ex. No. 12.

Exhibit No. 12 in the foregoing deposition is in the words and figures following, to wit:

472 Fairport, June 21st, 1869. To Perry Fuller, St. Nicholas Hotel, New York. Wife confined—very sick—dare not leave her now.

Will be there Wednesday morning. You must arrange with Dole. W'm Hayes.

Ex. No. 13.

Exhibit No. 13 in the foregoing deposition is in the words and figures following, to wit:

Fr. St. John's, June 19th. William Hayes, Fairport, N. Y. Leave for home Monday, thence Fairport. Is it absolutely necessary to remain here? Fred.

Ex. No. 14.

Exhibit No. 14 in the foregoing deposition is in the words and figures following, to wit:

Fairport, June 21st, 1869. To Frederick A. DeWolf, St. John's, New Brunswick. Come to Newark, thence to Fairport. Will meet you at Newark. W'm Hayes.

Ex. No. 15.

Exhibit No. 15 in the foregoing deposition is in the words and figures following, to wit:

July 23d, '69, Toronto via Buffalo, N. Y. To W'm Hayes, Fairport, N. Y. Will not be on boat to-day. Can you meet at Montreal Sunday, or when? F. A. DeWolf.

Ex. No. 16.

Exhibit No. 16 in the foregoing deposition is in the words and figures following, to wit:

Fairport, July 8th, 1869. To A. C. Davis, No. 3 Pine st., New York. Did Perry come over this morning? Will Stittauer settle before eleventh? Fred. is here. W'm Hayes. 10.33 a. m.

473 Ex. No. 17.

Exhibit No. 17 in the foregoing deposition is in the words and figures following, to wit:

July 8th, '69. From New York. To William Hayes, Fairport, N. Y. Fuller has not come to our office yet; don't know where he is. A. C. Davis, No. 3 Pine street. 11.55 a. m.

Ex. No. 18.

Exhibit No. 18 in the foregoing deposition is in the words and figures following, to wit:

July 18th. New York, N. Y. To W'm Hayes, Fairport, N. Y. Important. You come here at once. Answer. Albemarle Hotel. Perry Fuller. 12.13 a. m.

Ex. No. 19.

Exhibit No. 19 in the foregoing deposition is in the words and figures following, to wit:

July 15, '69. New York. W'm Hayes, Fairport. Come here at once. Important. Answer. Albemarle Hotel. P. Fuller. 5 p. m.

Ex. No. 20.

Exhibit No. 20 in the foregoing deposition is in the words and figures following, to wit:

Fairport, July 16th, 1869. To Perry Fuller, Albemarle Hotel, New York. Dispatch just received. Will reach Albemarle Hotel Saturday forenoon. W'm Hayes. 10.07 a. m.

Ex. No. 21.

Exhibit No. 21 in the foregoing deposition is in the words and figures following, to wit:

July 28th, '69. From Toronto, Ont. W'm Hayes, Fairport,
474 N. Y., via Buffalo, N. Y. Come over and see me before Saturday. Answer. Fred., Queen's Hotel.

Ex. No. 22.

Exhibit No. 22 in the foregoing deposition is in the words and figures following, to wit:

New York. W'm Hayes, Fairport, N. Y. Come to-night. We can settle to-morrow. Don't fail. Answer at once. P. Fuller.

Ex. No. 23.

Exhibit No. 23 in the foregoing deposition is in the words and figures following, to wit:

July 29th, '69. From New York. To W'm Hayes, Fairport, N. Y. Did you receive my dispatch yesterday? You must come. Answer at once. P. Fuller.

Ex. No. 24.

Exhibit No. 24 in the foregoing deposition is in the words and figures following, to wit:

Fairport, N. Y., 29th, 1869. To Perry Fuller, St. Nicholas Hotel, New York. Dispatch received too late. Will come over to-night. William Hayes. 1.30 a. m.

Ex. No. 25.

Exhibit No. 25 in the foregoing deposition is in the words and figures following, to wit:

Fred. A. De Wolf, Queen's Hotel, Toronto, Canada, via Buffalo, N. Y. Perry telegraphed twice to come to New York. I go this evening. W'm Hayes. Fairport, July 30, '69.

Ex. No. 26.

Exhibit No. 26 in the foregoing deposition is in the words and figures following, to wit:

475 Cresteline, Ohio, 7th, 1869. Received at Fairport, N. Y., Sept. 7. To W'm Hayes. Two (2) dispatches are here. Goods are attached in St. Louis. C. W. Jenner. 9—5 a. m.

(Read to the jury.)

The dispatches embodied in the deposition were also read. Dispatches from R. T. De Wolf were objected to by Mr. Broadhead, and not read by Mr. Henderson at present.

Recess for one hour. After recess—

Mr. Henderson read the deposition of James A. Whalen; also the bond referred to in the deposition.

The deposition of James A. Whalen, taken before Moses B. Maclay, a notary public within and for the county of New York and State of New York, on the twenty-fourth day of September, 1870.

Deposition of James A. Whalen.

JAMES A. WHALEN, a witness for defendants, being duly sworn and examined, testifies as follows:

I reside in the city of New York. I am treasurer of the Empire Fire Extinguis'ing Company, number 254 Broadway, in this city. I know William Hayes, the plaintiff in this suit, and also Perry Fuller. Have known Hayes from fifteen to seventeen years; I have been well acquainted with him.

476 Q. Look at the paper marked "M. B. M., Sept. 20, '70," now shown to you, and state in whose handwriting are the signatures to the same, as follows, "William Hayes" & "J. A. Whalen."

A. Those are the signatures of Mr. Hayes and myself.

Q. At whose instance did you sign that paper?

(Obj't to, not as to form.)

A. At Mr. Hayes' instance.

Q. When was it signed?

(Obj't.)

A. The date it bears date, 19th August, 1869.

Q. At what place was it signed?

(Obj't to.)

A. Near the corner of Broadway and Chambers st., over the bank there, up stairs.

Q. Did you receive any consideration for signing it?

A. No; nothing. It was done as an act of friendship for Hayes.

Q. Did Fuller request you to sign it?

(Obj't to.)

A. No; I only was introduced to Fuller the day before. I could not have signed it for Fuller, because I did not know the man.

(Paper annexed, marked "Exhibit D.")

Q. After signing that paper, and during the same month, did you have any conversation with Hayes? If yea, state the same fully and particularly.

(Obj't to.)

A. Yes; he said he had gone into business with Perry Fuller,

477 and they were buying a large amount of goods here, and were going to take them out West somewhere—to Kansas, I think he told me—and said they expected to make a great deal of money. He said they had been in that business before—the Indian *made*, and had made money. He also told me he would like to have made arrange-

ments with me, if he hadn't made arrangements with Perry Fuller, & had it not been for Perry Fuller, he would have liked to have had me go out with him; that is, go into business with him; but, says he, General Steadman is here, stopping at the 5 Avenue Hotel, and General Mead, (at some other place, which I don't recollect,) and I will introduce you to those gentlemen, to see which you would like to make arrangements with; and if you come to-morrow to St. Nicholas Hotel, I will have General Steadman there, and introduce you to him. He did have him there, and introduced me to him, and also to General Mead. We talked over one thing and another, & I saw them two or three times afterwards, but never made any arrangements with them.

478 Q. Did Hayes, at this time, in August, 1869, say anything to you as to where they were purchasing the goods?

(Obj't to.)

A. Yes, sir; he told they were buying a general stock of goods—merchandize—such as hats, caps, boots, shoes, groceries, and dry goods. I went in with him to several places where he was buying the goods, and he introduced me there. I think he told me he was buying the groceries from Belcher & Co. I went with him into the hat store, and into the dry-goods store, on the west side of Broadway, near Canal street. There are 2 or 3 names in the firm. I would recollect the name if I heard it.

Q. I mention to you the names of Curran, Goodwin, Walker & Co., and Buckley, Sheldon & Co. Was it either of those?

(Obj't.)

A. Curran—it was Curran, Goodwin, Walker & Co. I recollect the other name, but I didn't go in there. It was on the opposite side of Broadway. I went into Curran, Goodwin and Walker's several times.

Q. On either of these occasions of your calling at Curran, Goodwin, Walker & Co., did you see or were you accompanied by Perry Fuller there?

(Obj't.)

A. Yes, sir; we three—that is, myself, Hayes, & Fuller went
479 in there the day they settled their bill there.

Q. State what took place then & there.

(Obj't.)

A. I saw Fuller endorsing some notes. Hayes said they were going in there to settle up their bill.

Q. Did you see Hayes & Fuller together at any other store?

A. Yes; at the hat-store.

Q. Did you observe what they were doing there? If so, state.

(Obj't to.)

A. They appeared to be settling.

Cross-examined:

Q. Are you subpœned here as a witness?

A. No, sir; not subpœned; I attended at the request of Mr. Divine, who sent after me. I have received no pay for my attendance. I am a voluntary witness. First became acquainted with Hayes in this city, and let him and a man named Fowler an office. I was an importer. My first conversation with Hayes, after the execution of the paper marked "M. B. M., Sept. 20, 1870," was going up Broadway to that stationery store just above Delmonico, where Hayes & Fuller had their head-
480 quarters. Hayes told me they had their headquarters there.

Q. In this conversation going up Broadway, who spoke first in relation to Hayes buying goods?

A. Mr. Hayes.

Q. What did he say?

A. He told me he had made arrangements with Perry Fuller, and they were buying a stock of goods here to take out West, & he thought they would locate in Kansas, & if he hadn't made this arrangement with Fuller, he'd have liked to have made arrangements with me.

Q. Was anything further said in this conversation, in relation to his going in business in Kansas or out West? I don't ask what was said about Steadman and the other man?

A. He told me how many goods they were buying, & who he was buying of. [I asked him why he didn't buy of Claflin & Co.]

(Obj't to part in brackets.)

Q. Was there anything further said on that day in relation to his going into business out West?

A. Not on that day.

Q. How long was this conversation after the execution of this
481 paper, marked "M. B. M., Sept. 20, '70?"

A. The same day after we executed that, we walked right up Broadway to this place.

Q. When was the next conversation?

A. The next day at the St. Nicholas Hotel.

Q. At the conversation at the St. Nicholas Hotel what was said by Hayes, in relation to his (Hayes) going into business West or purchasing goods to take West.

(Obj't to.)

A. I arrived there about 9½ a. m.; he introdueed me to Steadman & Mead. I saw Perry Fuller & Hayes there. They said they had a little business to attend to close there, and they would go & attend to it, & meantime I could talk with Steadman & Mead. Then Hayes said in 5 or 10 minutes, & before he left the hotel, that my business would take some time, & I had better come down to this dry-goods store, & he gave me the name & number; that they were there, or would be there buying goods; then they went off, & I staid & talked with Steadman & Mead; that is all there.

Q. When & where did you see Hayes next.

A. The same day in this dry-goods store in Broadway.

482 Q. What conversation, if any, in relation to his going into business West, did you have with Hayes at that time & place?

A. Well, he said he wanted to get off in a few days if he could.

Q. What further if anything?

A. Nothing more. He bid me good day; asked when he would see me again; I told him in 2 or 3 days. "Well," he says, "you can see me at St. Nicholas at 9½ a. m., or at that stationery store, or in this dry-goods store, or at Belcher's, & then we separated.

Q. When did you next see him?

A. I saw him several days afterwards—three or four days, I think, in the stationery store. Perry Fuller & Hayes, & one or two other men, whose names I forget, that they introduced me to, were present there.

Q. Have you stated, in your cross-examination, all the conversation you had with Hayes at the three first interviews mentioned in relation to his purchasing goods, & going into business West?

A. I think I have, but not at the 4th.

Q. Was it at either one of these conversations that you have
483 related in your cross-examination that you saw Fuller endorsing notes?

A. Not at the first three.

Q. Did you have more than one conversation with Hayes at the store of Curran, Goodwin, Walker & Co.?

A. Yes, sir; I had several.

Q. How did you know that Fuller was endorsing the notes?

A. Hayes told me & I saw him myself. An action has been brought against me & Hayes together upon this undertaking, marked "M. B. M., Sept. 20, '70."

Q. That so far Hayes has left you in the lurch?

A. Yes, sir.

Q. You defended the suit, did you?

A. Yes, sir; I have not paid the judgement yet, but suppose I'll have to. I am solvent and able to pay it.

Re-direct:

Q. State what occurred at the 4th conversation, which you say occurred at the stationery store, when Fuller, Hayes & others were present.

(Obj't to.)

A. I waited about 10 minutes, & we went into Delmonico's for a
484 drink & cigars, & went up town; we had no conversation there in the stationery store.

Q. You say you asked Hayes why they didn't buy of Claflin & Co. What did he say in reply?

(Obj't to.)

A. He said they had bought a good many goods a year or two before when they were in the Indian trade, & had some difficulty with them, & thought they could make better arrangements with these other houses than they could make with Claflin.

Q. State what occurred between you & Hayes at the time you executed the paper, marked "M. B. M., Sept. 30, '70," in reference to that paper.

(Obj't.)

A. Hayes & Fuller & Nelson came down to 119 Chambers street the same day I executed it, & Hayes said he wanted me to execute this bond for Fuller; it was a mere matter of form he said. I asked him for what amount; he said $500. I said "I don't know P. Fuller. I can't go security for him." "Well," says he, "you know me, & you can go it for me, & I'll hold you harmless." & I told him. "On that head, I go the
485 security, but not otherwise." He told me he was worth $30,000, & owned a fine place in Monroe County, near Rochester. I signed the paper without reading it, & Nelson took it away. Nelson was there at the time. I think the name of the firm that kept the stationery store was Braner Brothers.

J. A. WHALEN.

Subscribed & sworn to before me this 24th day of September, 1870.

MOSES B. MACLAY,
Notary Public, N. Y. C.

Exhibit D, referred to in the foregoing deposition of James A. Whalen, is in the words & figures following, to wit:

Exhibit D referred to in the foregoing deposition of James A. Whalen.

N. Y. supreme court.

THE NATIONAL CENTRAL BANK OF CHERRY Valley,
against
PERRY FULLER.

An attachment having been issued in the above action, to the sheriff of the city and county of New York, and the above-named defendant having appeared in such action, and being about to apply to the officer who issued such attachment, or to the above-mentioned court for an order to discharge the same, we, William Hayes, of Fairport, Monroe County, New York, and James A. Whalen, of No. 119 Cham-
486 ber street, in said city of New York, do hereby, pursuant to the statute in such case made and provided, undertake in the sum of four thousand dollars, that we will, on demand, pay to the above-named plaintiff the amount of the judgment which may be recovered against the above-named defendant in this action, not exceeding the above-mentioned sum.

Dated N. Y., August 19th, 1869.

J. A. WHALEN.
WILLIAM HAYES.

CITY AND COUNTY OF NEW YORK, *ss:*

W'm Hayes, one of the subscribers to the foregoing undertaking, being sworn, says that he is a resident and freeholder within this State, and is worth the sum of twenty thousand dollars over all his debts and liabilities & exclusive of property exempt by law from execution.

WILLIAM HAYES.

Sworn before me this 19th day of August, 1869.

A. GOODRICH FAY,
Notary Public, N. Y. C.

CITY AND COUNTY OF NEW YORK, *ss:*

James A. Whalen, one of the subscribers to the foregoing undertaking, being sworn, says that he is a resident and householder within this State, and is worth the sum of four thousand dollars over all his
487 debts and liabilities and exclusive of property exempt by law from execution.

J. A. WHALEN.

Sworn before me this 19th day of August, 1869.

A. GOODRICH FAY,
Notary Public, N. Y. C.

CITY AND COUNTY OF NEW YORK, *ss:*

I certify that, on this 19th day of August, 1869, William Hayes and James A. Whalen above named, to me known, personally appeared before me, and severally acknowledged that they executed the above undertaking as their own free act for the uses and purposes therein mentioned.

A. GOODRICH FAY,
Notary Public, N. Y. C.

The release of the attachment of the Cherry Valley Bank against Fuller.

Mr. BROADHEAD objected, as it was a copy.

Mr. HENDERSON offered to read, then, the deposition of the clerk, Mr. Garrison.

Mr. BROADHEAD insisted on the original being produced. Objection overruled, as being made too late.

Mr. HENDERSON proceeded to read the deposition of the messenger in the clerk's office.

Deposition of Dennis Garrison, taken on the part of the defendants, before Moses B. Maclay, notary public within and for the county
488 and State of New York, on the 19th & 20th days of September, 1870, is in the words & figures following, to wit:

Deposition of Dennis Garrison.

DENNIS GARRISON, who, being duly sworn and examined by Mr. Divine, counsel for defendants, testifies as follows:

Q. What is your business now?

A. I act as messenger in the county clerk's office.

(Mr. Doolittle objects to the examination of this witness on the ground that no notice has been given.)

Q. You have produced here certain papers from the files of the county clerk's office, have you not?

A. Yes, sir.

Q. One purports to be an affidavit entitled: "In the supreme court of the State of New York, in the suit of William Hayes against Perry Fuller et al., filed July 20, 1869," and the other purports to be an undertaking on attachment in the same suit, filed July 19th, 1869.

A. Yes, sir.

Mr. Divine. This may as well be marked for identification.

DENNIS GARRISON.

Subscribed & sworn to before me this 19th day of September, 1870.

MOSES B. MACLAY,
Notary Public, N. Y. C.

489 Both papers marked "M. B. M.," Sept. 19, 1870. The original affidavit is annexed, marked Exhibit "B," & a copy of the undertaking marked Exhibit "C."

SEPTEMBER 20, 1870.

Dennis Garrison further examined by defendants' counsel:

Q. You were examined as a witness in this case yesterday?

A. Yes, sir.

Q. Will you please now produce from the files of the county clerk's office in this city an undertaking given on discharging the attachment in the case of the National Bank of Cherry Valley ag'st Perry Fuller.

A. Yes, sir; I produce it, marked "M. B. M.," Sept. 20, 1870.

(A copy annexed marked Exhibit "D.")

DENNIS GARRISON.

Exhibit B referred to in the foregoing deposition of Dennis Garrison is the same affidavit referred to and copied on page 624 of this transcript.

Exhibit C referred to the deposition of Dennis Garrison is in the words & figures following, to wit:

Exhibit C referred to in the foregoing deposition of Dennis Garrison.

N. Y. supreme court.

WILLIAM HAYES *against* PERRY FULLER, ALEXANDER MCDONALD, & Fred'k A. De Wolf.	Undertaking on attachment.

490 The above-named plaintiff having applied to one of the justices of this court for a warrant of attachment against the property of the above-named defendants as non-residents, we, William Hayes, of Fairport, in the State of New York, and H. H. Bliss, of No. 24 White street, in said city of New York, do undertake, pursuant to the statute in such case made and provided, in the sum of two hundred and fifty dollars, that if the said defendants recover judgment in this action, the above-named plaintiff will pay all costs that may be awarded to the above-named defendants, and all damages which the said defendants may sustain by reason of the said attachment, not exceeding the sum above mentioned.

Dated N. Y., July 19th, 1869.

WILLIAM HAYES. [L. S.]
H. H. BLISS. [L. S.]

CITY AND COUNTY OF N. Y., *ss:*

William Hayes, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder within this State, and is worth the sum of five hundred dollars over all his debts and liabilities, and property exempt from execution.

WILLIAM HAYES.

Sworn to before me this 19th day of July, 1869.

FREDERICK I. KING,
Notary Public in & for County of New York.

491 CITY AND COUNTY OF NEW YORK, *ss:*

H. H. Bliss, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and householder within this State, and is worth the sum of five hundred dollars over all his debts and liabilities and property exempt from execution.

H. H. BLISS.

Sworn to before me this 19th day of July, 1869.

FREDERICK I. KING,
Notary Public in and for County of New York.

CITY AND COUNTY OF NEW YORK, *ss:*

I certify that, on this 19th day of July, 1869, William Hayes and H. H. Bliss, above named, to me known *to me* to be the same person' described in, and who executed, the above undertaking, personally appeared before me, and acknowledged that they executed the above un-

dertaking as their own free act, for the uses and purposes herein mentioned.

[L. S.] FREDERICK I. KING-
Notary Public in and for County of New York.

Exhibit D, referred to in the foregoing deposition of Dennis Garrison, is the same Exhibit D referred to in the deposition of James A. Whalen, and copied on page 485 of this transcript.

Mr. BROADHEAD. I raise another objection to it. It is not the
492 bond referred to in the deposition of the witness.
(Objection overruled.)

Mr. HENDERSON then read the document.

Mr. HENDERSON (to the court.) I find it is the original paper.

Mr. HENDERSON read the other paper referred to by the clerk, entitled William Hayes against Perry Fuller, Alexander McDonald, and Frederick A. De Wolf.

The paper here referred to is Exhibit C, referred to in the deposition of Dennis Garrison, and is copied on page 489 of this transcript.

493 Read the deposition of Samuel R. Sylvester.

Deposition of Samuel R. Sylvester.

The deposition of Samuel R. Sylvester, taken at Washington, District of Columbia, before Edw'd F. Brown, special commissioner, on the twenty-third day of September, 1870, on the part of the defendants.

SAMUEL R. SYLVESTER, being duly sworn, doth depose and say as follows, in answer to the interrogatories by M. W. Devine, esq., counsel for the defendants:

I reside in Baltimore, Md.; am forty-one years of age; and my occupation is that of a pharmaceutist. I was introduced to William Hayes, the plaintiff in this suit, in this city, in February, 1869, and have met him once since at the office of John F. Coyle, in this city. I don't know whether I would know him now. I know Perry Fuller by sight, but am not acquainted with him. I saw him at Mr. Coyle's office. At the time I was introduced to Mr. Hayes, I was agent for the National Intelligence'. He said he was glad to see me; that he had come here to see
Mr. Coyle, Mr. Fant, and others. Mr. Hayes was pretty well set up
494 at the time. He had been drinking freely; he said he had come on to settle some business for Perry Fuller; he stated they had a big thing in New Orleans.

(The last clause objected to by Mr. Wilson.)

He said he had made large purchases, or was going to make large purchases of goods for Mr. Fuller, and they expected to make a large fortune.

(Objected to by Mr. Wilson.)

I am not certain whether he said he had made, or was going to make, large purchases; he did not say where, or for what, they had been bought. I think he said he was going north, or had been north, to buy them; he said they had already made plenty of money; that they had a mint. He was very free with his money, as most men are when they are full of whiskey; he asked me if I wanted a hundred dollars, and said he had plenty of money in bank, and would draw his check for it; he seemed to be delighted that I was a friend of Mr. Coyle.

Question. Did he say anything to you on the subject of his relations with Perry Fuller? If so, state all he said on the subject.

495 (Objected to by Mr. Wilson.)

Answer. He said he was Perry Fuller's agent, his right bower, his right-hand man.

Ques. 2. Did he speak to you more than once on the subject of his going north, or that he had been north to purchase goods for Perry Fuller? If so, state how often and all that you can now remember that he said on that subject on each occasion.

(Objected to by Mr. Wilson.)

Answer. The conversation was repeated several times; we talked about half an hour. That was the burden of the conversation.

Ques. 3. In this connection repeat what was the burden of the conversation to which you allude.

(Objected to by Mr. Wilson.)

Answer. He said he came here, as the agent of Perry Fuller, to see Mr. Coyle, Fant, and others, to settle some business in relation to the custom-house in New Orleans. He said Mr. Coyle was to get some money from Mr. Fuller; he said he was going or had been north to purchase a large lot of goods for Perry Fuller, out of which they ex-

496 pected to make a heap of money.

Quest. Did he say anything on the subject of Fuller and himself being jointly interested in the goods so bought?

(Objected to by Mr. Wilson.)

Answer. Not at all. My impression was, from what he said, that he was Fuller's agent or clerk.

(Answer objected to by Mr. Wilson.)

Cross-examination by Mr. Wilson:

1st x-int. What was the date of your introduction to the plaintiff Hayes?

Answer. I don't recollect the day. It was in the month of February, 1869, at the Metropolitan Hotel, in this city.

2nd x-int. Who introduced you?

Answer. I think it was John Martin. I am not certain; it might have been Ben. Sheckelly, the clerk of the hotel.

3 x-int. Who was present during the conversation you have referred to?

Answer. Mr. Martin, I think, heard a portion of it, and Hayes took me aside during a portion of it.

4th x-int. Was any one else present, and did any one else hear the conversation you have referred to?

497 Answer. Not that I recollect.

5 x-int. In what part of the hotel did the conversation occur?

Answer. In the bar-room, near the front window.

6 x-int. What part of the conversation occurred after Hayes took you aside?

Answer. The conversation in reference to money being due by Fuller to Mr. Coyle. I told him not to talk so loud.

7th x-int. What part of the conversation did Mr. Martin hear?

Answer. I can't say positively—he may have heard the whole of it.

8th x-int. Have you ever asked Martin what he heard, or had any conversation with Martin as to what Hayes said?

Answer. I don't recollect asking him what he heard. I suppose that he heard the whole of it. We were all talking together, except the time that he took me aside. I was on my way up town on business at the

time, and told Mr. Martin that he had better tell Mr. Coyle what Hayes had said while we were talking.

9th x-int. Have you had any conversation with Martin since that day, in regard to what Hayes said?

498 Answer. Yes, sir; several times.

10th x-int. When was the last?

Answer. About a couple of weeks ago.

11th x-int. Who were present?

Answer. There was no one present at the time, Martin and Mr. Coyle called to see me together.

12th x-int. Where did they call upon you?

Answer. At my place of business in Baltimore.

13 x-int. What was the object of their visit, as they explained it?

(Objected to by Mr. Devine.)

Answer. They told me that I would have to be summoned as a witness in this case before the commissioner. They asked me if I had any objection to putting in writing the conversation I had with Mr. Hayes. I told them I had not. I did put it in writing—a synopsis of it—and swore to it. I gave it to Mr. Coyle—it is now here in possession of Mr. Devine.

(Mr. Devine offers it as testimony, if the plaintiff calls for it.

Counsel for plaintiff replies, "If Mr. Devine offers it, I have no objection to its being filed as part of this case."

499 Mr. Devine repeats his offer to produce the affidavit if called for by plaintiff's counsel, and requests plaintiff's counsel to state whether he does or does not call for it.

Plaintiff's counsel says he does not care whether he produces it or not.)

14 x-int. Who paid for the affidavit?

Answer. I believe Mr. Coyle paid the magistrate fifteen cents—that is the price in Baltimore.

15 x-int. Did Martin, at any time, say what his recollection of the conversation was?

Answer. We talked together as though we both recollected the same thing. We never compared notes.

16 x-int. What did he offer you a hundred dollars for?

Answer. He asked me if I wanted any money—and said he would give me a check for a hundred dollars—just as any man who was half tight would. I took it that he was delighted to see me because I was connected with the National Intelligence', and was Mr. Coyle's friend. He probably knew at the time that we were all pretty hard up.

(The witness states that he does not want the last remark to go down—that it was not intended as any answer to the question, but was a side remark addressed to Mr. Wilson.

500 The defendant's counsel objects to the same sentence.)

17th x-int. Did you and Hayes and Martin drink together at the bar during the conversation referred to?

Answer. Not during it, but before the conversation.

18 x-int. How many times did you drink together.

Answer. Once. One drink was all I took, and that was when I was introduced. He was pretty well set up then.

Re-examination by Mr. Devine:

Ques. 5. In whose handwriting is the affidavit to which you have referred as having been made in Baltimore?

Answer. Mine.

Q. 6. Was it drafted by you in the form in which it now appears, sworn to by you?
(Objected to by Mr. Wilson.)
Answer. Yes, sir.

S. R. SYLVESTER.

Sworn to and subscribed before me this 23d day of September, 1870.
EDW. F. BROWN,
Special Commissioner.

Mr. Broadhead objected to the conversation between Martin,
501 Sylvester, and Coyle, in the deposition. Mr. Henderson considered the objection well taken, and did not read the part referred to. Mr. Henderson read the deposition of Louis Stettauer.

The deposition of Louis Stettauer, taken on the 28th day of April, A. D. 1870, at the city of New York, before Moses B. Maclay, a notary public in and for the county of New York and State of New York.

Deposition of Louis Stettauer.

LOUIS STETTAUER, who, being duly sworn & examined on behalf of the defendants, testifies as follows:

I am 40 years of age; I reside at 42 East 26th street, New York City; I am in the dry-goods business; went into that business in 1869, on the first day of January, 1869; prior to that I had been out of business from 1865 to 1869, that is, out of legitimate business. During 1867 & 1868, I had an office & place of business at 45 Murray street in this city. I know Perry Fuller; I have known him about 10 years, & perhaps longer than that.

Q. Please state in what business he has been engaged while you have been acquainted with him, so far you know?
(Obj'd to.)
A. I don't know in what business he has been engaged; he has been engaged in so many transactions.
Q. Repeated—state so far as you know.
(Objected to.)
A. I think he has been engaged in business in Kansas, 10 or 12 years ago.
Q. In what business was he engaged in Kansas?
502 (Obj'd to.)
A. I don't know in what business; just like every other country store, I suppose. I want to correct that testimony, it just strikes my mind, I got acquainted with him in 1861 or 1862.
Q. In what business was he engaged when you first became acquainted with him? State as far as you know?
(Objected to.)
A. I know he was engaged in business like any other country store.
Q. At what place?
A. I don't think I knew then at what place he was engaged.
Q. Did you ever know at what place he was carrying on business, & if so, state the name of the place?
(Objected to.)
A. I think it was at Baldwin, Kansas.
Q. Was he a member of any firm or firms, so far as you know; & if so, state their names?

(Objected to.)

A. I think at that time he was interested in Thomas, Stevens & Co., & then with Fuller & McDonald, or Fuller, McDonald & Co.

Q. Did you, or any firm of which you are or have been a member, have any business transactions with him?

(Objected to.)

A. Yes.

503 Q. Were those transactions with your firm or with you individually, or with both?

(Ob'd to.)

A. There were some transactions with me individually, some with a firm I was interested in—the name of that firm was C. S. Stettauer & Co.

Q. What was the business of that firm, C. S. Stettauer & Co., & where was it carried on?

(Obj'd to.)

A. Dry-goods business, & carried on at 45 Murray st.

Q. Were Fuller's transaction with that firm confined to the purchase of goods?

(Obj'd to.)

A. No; they advanced him money.

Q. What period did his transactions with that firm cover?

(Obj'd to)

A. I think from 1867, or the fall of 1867, up to about April or May, 1868.

Q. Were all his transactions with that firm closed & settled in April or May, 1868?

(Obj'd to.)

A. No.

Q. When were they finally closed and settled?

(Obj'd to.)

A. Sometime in August, 1869.

Q. Did that firm receive any collateral security for the money advanced to him as you have stated?

(Obj'd to.)

A. Yes, but it turned out to be worthless.

Q. Please state of what that collateral security consisted?

504 (Obj'd to.)

A. Vouchers on the Indian Department.

Q. What has became of those vouchers?

(Obj'd to.)

A. I think they are in my possession, they were given to me with the understanding that part of them belonged to General Blunt.

Q. Did your said firm have any other collateral security for said advances except said Indian vouchers?

(Obj'd to.)

A. Yes.

Q. Please state of what they consisted?

(Obj'd.)

A. They were a house, there were some stocks in the Fort Smith & Little Rock Bank, & notes which I wouldn't give a cent for a bushel of 'em.

Q. Where was the house located?

(Obj'd to.)

A. In 33d street in the city of New York; I don't recollect the number, it is near the 8th avenue.

Q. How many shares of the Fort Smith & Little Rock Bank?

A. I think there were 250 shares.
Q. Did you or your firm hold a deed of the house?
(Obj'd to.)
A. I did hold a deed.
Q. Have you that deed still?
(Obj'd to.)
A. No, sir.
Q. What was the total amount of the advances, as collateral for which your firm held those Indian vouchers, that house, that bank stock, and those notes?
(Obj'd to.)
505 A. I think it was something like $76,000; that was the first transaction, when General Blunt was interested; he got some of the money. I think that advance was made in 1867.
Q. When was the next transaction?
(Obj'd to.)
A. Commencing probably from latter part of 1867, or beginning of 1868, & when I settled up with Fuller, he owed the firm, I think, $29,000; that settlement was in August—I think it must have been between the 15th & the 25th Aug't, 1869.
Q. Did Fuller pay your firm that balance of about $29,000 when that settlement was made?
(Obj'd to.)
A. No, sir; but he assumed some outstanding indebtedness to cover that amount & more than that amount, I think.
Q. Was the settlement that was then made reduced to writing?
(Obj'd to.)
A. Yes.
Q. Was it put in the form of an agreement?
A. Yes, sir.
Q. Have you that agreement?
A. Yes.
Q. Please produce it.
A. I decline to produce it.
Q. Have you, since you were subpœnaed, spoken to Mr. Lyon or Mr. Doolittle in reference to producing that paper on this examination?
A. No, sir.
506 Q. Have you consulted or spoken with any counsel or any attorney in reference to the production of that agreement on this examination?
A. No, sir.
Q. Is the firm of Doolittle, Davis, Lyon & Nelson acting as your attorneys now in any suit or proceeding?
A. No, sir.
Q. Do you mean to state that that firm or some member of it, is not your counsel in law matters at present?
A. No; I mean they are not.
Q. Has that firm never acted as your counsel in any law matter?
A. Not the firm.
Q. Has any member of that firm so acted?
A. I think Davis acted once for me & my brother, that is, some 3, 4, or 5 years ago; that is all I know of.
Q. Have you ever consulted that firm or any member thereof on any legal matter?
A. I don't recollect; I may have.

Q. Have you not applied for legal advice to Mr. Nelson of that firm within the year past?
(Objected to.)
A. I am not aware of it.
Q. Have you been in the habit of calling at the office of that firm during the year past?
(Objected to.)
A. I am not aware of it.
Q. Have you not been in the habit of calling at the office
507 of that firm during the past few months?
A. Very frequently.
Q. On what business?
A. I' respect to accounts that Mr. Fuller assumed to pay, but which have not been paid yet.
Q. Have you had interviews and conversations when you have called there?
A. Only on business, generally with Mr. Nelson.
Q. Have you ever had any conversation with him in reference to this suit which has been brought by Mr. Hayes for the recovery of property seized by the sheriff under attachment?
(Objected to.)
A. I don't recollect; I don't think I have.
Q. Why do you decline to produce the agreement which was entered into between you and Fuller, at the time of this settlement in August, 1869?
(Ojected to.)
A. I have no particular reason, but I don't think I ought to show any of my private papers.
Q. Will it injure or prejudice you in any way, to allow that agreement to be seen?
A. I don't know whether it would prejudice.
Q. Do you still decline to produce it?
A. Yes, sir; I can tell you all there is in it—I will give you all there is in it.
Q. Will you have any objection to read the agreement over to
508 us here & let it be copied down by the stenographer?
A. Yes, sir; I will object—I will have to see Mr. Dyett in relation to it, or Mr. Townsend.
Q. What period did the transactions cover which Fuller had with you individually?
(Objected to.)
A. I think it was about from the latter part of March, 1868, until the settlement.
Q. What was the nature of those transactions that he had with you individually?
(Objected to.)
A. Advancing money.
Q. Were your individual transactions with Fuller settled up at this same time—in August, 1869?
(Objected to.)
A. Yes, sir.
Q. And at that time and prior to the settlement, did you hold any collateral security for your indvidual advances to him?
(Objected to.)
A. I had that house and some bank stocks that were claimed by Mrs. Fuller at the time of the settlement.

Q. Anything else?

Q. There were other papers—there were notes and bank stock, the proceeds of 100 shares of bank stock claimed by Mrs. Fuller.

Q. How much did the proceeds of this one hundred shares of bank stock amount to?

(Objected to.)

509 A. I think it amounted to little over $10,000.

Q. And how much was the balance due to you individually at this settlement?

(Objected to.)

A. I think it was about twenty-nine or thirty thousand dollars.

Q. Do you mean there was $29,000 owing to you individually, and also twenty-nine or thirty thousand dollars owing to your firm besides?

A. No; it was owing to Charles S. Stettauer & Co.

Q. The whole thing?

A. Yes, sir.

Q. And nothing to you individually?

A. Nothing to me individually.

Q. The deed of that house on 33d street, was that ever put on record?

A. Yes, sir.

Q. From whom was that deed to you?

(Objected to.)

A. The deed was made out by Edward E. Fuller.

Q. At the time you settled, what was done with the house and lot?

(Objected to.)

A. Nothing; that house had been sold in June, 1868, & a part of the proceeds had been handed over, as I understood, to Mrs. Fuller, and the balance, some $5,100, at the time of the settlement, was paid over to her, as she claimed it was her property.

Q. How was the house sold; was it sold at private sale, or

510 at auction?

A. Sold at private sale.

Q. To whom?

(Objected to.)

A. I think to a man by the name of Levi Rosenfeld.

Q. For how much?

(Objected to.)

A. About 18 or 19 thousand dollars.

Q. Do you recollect Mr. Rosenfeld's first name?

A. Yes, sir; Levi.

Q. Who executed the conveyance to Rosenfeld; did you execute it?

(Objected to.)

A. Yes, sir.

Q. It went direct from you to him?

A. I think so; I don't recollect very distinctly about it.

Q. Did you ever receive from Perry Fuller any stock of the Brooklyn Fibre Co.?

(Objected to.)

A. Yes, sir; I think so.

Q. And what was done with that stock at the time of this settlement?

(Objected to.)

A. Before the settlement it was handed over to Mr. Fuller himself at the St. Nicholas Hotel; sometime last summer, before the settlement.

Q. Who was present at the time it was handed over to him?

(Objected to.)

511 A. It was handed over by my brother, I think, and Mr. Einstein.

Q. What is Mr. Einstein's full name?
A. George Einstein.
Q. Where does he reside?
A. Leavenworth, Kansas.
Q. Where does your brother reside now?
A. He may be in Leavenworth; I don't know.
Q. What was done with the promissory notes of H. E. McKee?
A. Handed over to him.
Q. At the same time?
A. At the same time. No; I think I have got them.
Q. You think you still have them?
A. I think I may have them.
Q. Did you ever receive from Perry Fuller any capital stock of the First National Bank of Fort Smith, Arkansas?
(Objected to.)
A. I have stated so already.
Q. What became of that?
(Objected to.)
A. I sent it down to Fort Smith to be sold, and the bank confiscated it for their own use as the property of Perry Fuller, because he owed them as they alleged. I had it sent down.
Q. Was it claimed that that stock belonged to Mrs. Fuller?
(Objected to.)
A. I don't recollect that now.
Q. The one hundred shares of the capital stock of the Mer-
512 chants' Bank of Little Rock, Arkansas, what became of that?
(Objected to.)
A. That was claimed by Mrs. Fuller, and paid over to her.
Q. The proceeds paid over to her?
A. Yes, sir.
(The witness here reads a part of the agreement to Mr. Devine.)
Q. Did Perry Fuller, at any time, execute any conveyance to you of any real estate in Washington?
(Objected to.)
A. I don't know whether I held a deed of trust, or my brother; I think I did.
Q. At whose request did you receive that deed?
A. Mr. Fuller asked me for a loan of $5,000, and put that in my name, with some other gentleman's; I don't know who the party was.
Q. What did he say to you on the subject of executing that conveyance to you?
(Objected to.)
A. I don't recollect; that is over two years ago.
Q. Did you hold the deed of that property at the time of this settlement, in August, 1869?
(Objected to.)
A. I think I did; for the reason that I signed a paper transferring the property to another party.
Q. Was it any part of the settlement that was made in August, 1869, that you should transfer that property to that other party?
513 (Objected to.)
A. I don't recollect; it is not in the written agreement.
Q. Was that deed executed about the same time that the settlement was made—transferring it from you?
(Objected to.)
A. Yes; probably a few days afterwards.

Q. Was it executed in pursuance of the settlement that was then made?
(Objected to.)
A. Yes, sir.
Q. Was it so executed, as I understand you, to carry out the settlement that was then made in August?
(Objected to.)
A. Yes, sir.
Q. The conveyance that you executed at that time of that property was executed to Thomas T. Buckley of this city, was it not?
(Objected to.)
A. That I don't recollect; I don't believe I ever *seen* the names.
Q. Was the name left blank at the time you executed it?
(Objected to.)
A. No; I don't think it was.
Q. You think the name was inserted.
A. Yes, sir.
Q. Do I understand you to say that you held the Washington property as security for Fuller's indebtedness to you?
(Objected to.)
A. I was under that impression.
514 Q. & I understand you to say that at the time it was originally conveyed to you, you advanced Fuller $5,000 on the conveyance?
(Objected to.)
A. I think it was $5,000; and when I gave him the money, I think he told me he was going to give me a deed for it; it was a little over $5,000.
Q. While this Washington property stood in your name, who collected the rents of it?
(Objected to.)
A. I didn't.
Q. Do you know who?
(Objected to.)
A. No, sir.
Q. Who had the control of the property while it stood in your name—who had charge of it?
(Objected to.)
A. I think Mr. Fuller lived in the house.
Q. Between what parties was the settlement negotiated that was made in the month of August, 1869?
(Objected to.)
A. Between what parties?
Q. Yes; who were the parties?
A. The parties to the settlement?
Q. The parties who settled—who made, talked, and arranged about the settlement?
(Objected to.)
A. Myself & Perry Fuller.
515 Q. Did William Hayes participate?
(Objected to.)
A. On Mr. Fuller's side, and Mr. Einstein was on my side. The' compromised together.
Q. Mr. Hayes acted on Mr. Fuller's side, and Mr. Einstein acted on your side?
(Objected to.)
A. Yes, sir.
Q. In the course of that settlement that was made here in August,

was it arranged as part of the settlement that the house in Washington should be transferred to some other party?

(Objected to.)

A. I don't recollect.

Q. Will you please state all that was said during the settlement in reference to the house in Washington?

(Objected to.)

A. We had a talk from the 11th of June up to the 20th August, we talked about this settlement.

Q. Was anything said about that house in Washington?

(Objected to.)

A. I don't remember.

Q. How did you come to execute the conveyance of the house and lot in Washington?

(Objected to.)

A. I thought at the time I had sufficient security in those bank stocks.

Q. And at whose request did you execute the conveyance of that house?

(Objected to.)

A. I think Mrs. Fuller's.

Q. Are you positive of that?

516 (Objected to.)

A. I am not so—quite positive.

Q. Was it not in fact at the request of Perry Fuller or of W'm Hayes?

(Objected to.)

A. I am sure it was not Hayes; but Perry Fuller acted as the agent of Mrs. Fuller all the time when I was under arrest.

Q. And when you speak of having executed the deed did he or Mrs. Fuller request it. Do I understand you to mean that you executed it at the request of Perry Fuller as her agent?

(Objected to.)

A. I really don't recollect whether Mrs. Fuller or Perry Fuller, or Mr. Nelson, spoke to me about the execution of that deed.

Q. But you did execute it, as I understand you, as part of the settlement?

(Objected to.)

A. Yes, sir.

Q. Do you know W'm Hayes?

A. I don't think I have known him longer than four or five years.

Q. What was his business when you first became acquainted with him?

A. I think he was in the office of Perry Fuller.

Q. In what capacity?

A. He was attending to the books. I thought he was book-keeper.

Q. How long did he continue acting there in that capacity, so far as your own knowledge extends?

517 A. I don't know. I very seldom went to Perry Fuller's office.

Q. Where was Fuller's office in this city?

A. Corner of Murray street & Broadway.

Q. Was it at that place that you saw Hayes act as book-keeper?

A. Yes, sir; that is one of the places I saw him.

Q. The office of your firm was also in Murray street, I believe?

A. Yes, sir; 45 Murray st.

Q. Did Fuller at any time move his office to your place in Murray st.?

(Objected to.)

A. He moved his furniture there.

Q. Did he not for some time make that his headquarters for the transaction of such business as he had to do?

(Objected to.)

A. Yes, sir; letters were directed there.

Q. And when Fuller was in the city, was he not there himself?

(Objected to.)

A. Once in a while he was there, but not regularly. He only called there once in May, 1868, at the time we wanted him to settle.

Q. In his absence was there any person there attending to his business?

(Objected to.)

A. Yes, sir.

Q. Who was it?

518 A. His son, Edward.

Q. Any one else?

A. No, sir.

Q. Was a man by the name of Frederick A. DeWolf there at any time, attending to his business?

A. No, sir.

Q. Do you recollect Hayes being there at any time attending to his business?

A. Not attending to his business.

Q. Do you know what Hayes was doing at that time?

A. No, sir.

Q. At the time, or about the time of this settlement, after it was agreed on, did you have any talk with Fuller on the subject of any business that he intended going into?

(Objected to.)

A. No, sir.

Q. Or with Hayes on the subject?

A. No, sir.

Q. While you were here negotiating with Fuller, in 1869, from June to the latter part of August, as you have stated, with what persons, on behalf of Fuller, did you have interviews?

(Objected to.)

A. The first with Mr. Fant, then with Mr. Nelson, then Mr. Hayes, then Fuller, then Mrs. Fuller. I think that is about all I recollect.

Q. And how many interviews did you have with Mrs. Fuller?

519 (Objected to.)

A. I don't know. Three or four, for all I know.

Q. And at what place?

A. At the St. Nicholas hotel, and once at my office.

Q. Was Mrs. Fuller's counsel present at these interviews?

(Objected to.)

A. Only once.

Q. And from whom did your firm originally receive the securities which were claimed, at the time of the settlement, to belong to Mrs. Fuller?

(Objected to.)

A. It was——

Q. (Interrupting.) Were they not received from Perry Fuller, or Perry Fuller & Co.

(Objected to.)

A. They were handed over to me by Edward Fuller.

Q. And for what purpose were they handed over to you by him. Did you hold them as collateral?

(Objected to.)

A. I did hold them as collateral. They were handed over to me some time in March, 1868.

Q. For what purpose? I want to know for what purpose they were handed over to you.

(Objected to.)

A. As near as I can recollect, to cover his indebtedness.

Q. To cover whose indebtedness?

(Objected to.)

A. Perry Fuller's.

520 Q. By "covering" do you mean as collateral security for his indebtedness?

(Objected to.)

A. Yes, sir.

Q. What stocks did Edward Fuller hand over to you, or deliver to you?

(Objected to.)

A. He handed me over 250 shares of bank stock.

Q. Of what bank?

A. Of the Fort Smith and Little Rock Bank.

Q. That is to say he handed over to you 100 shares of the 1st National Bank of Fort Smith, Arkansas, and 100 shares of the stock of the Merchants National Bank of Little Rock?

(Objected to.)

A. Yes, sir.

Q. You don't mean that it was 250 shares of stock of one bank?

A. No, sir. Of the Fort Smith and Little Rock Bank, I said.

Q. How much stock of each did he hand over to you?

(Objected to.)

A. 150 shares of the Fort Smith Bank and 100 shares of the Little Rock Bank.

Q. Did he hand over to you also the capital stock of the Brooklyn Fibre Co.?

(Objected to.)

A. I think so.

Q. Did he also hand over to you any stock of the Sleeve-Fastening Button Co.?

521 (Objected to.)

A. I think so.

Q. What has become of the stock of the Sleeve-Fastening Button Co. Do you still retain that, or was that given up?

(Objected to.)

A. It was given up.

Q. To whom was it given up?

(Objected to.)

A. I think to Perry Fuller, at his hotel.

Q. When you received the certificates of that bank stock, were there any powers of attorney to transfer attached?

(Objected to.)

A. There must have been blank transfers on the back of it.

Q. By whom were those blank transfers signed?

(Objected to.)

A. May be by Perry Fuller, or Edward Fuller.

Q. Was there any blank transfer accompanying the stock of the Sleeve-Fastening Button Co. and the Brooklyn Fibre Co.?

(Objected to.)

A. I suppose so.

Q. And by whom, so far as you now recollect, were those transfers signed in blank?

(Objected to.)

A. Either by Ferry Fuller or Edward Fuller.

Q. For how long a time was Edward Fuller attending to the business of Perry Fuller in this city, as near as you can tell?

(Objected to.)

522 A. Probably three, four, five, or six months. I don't know. I never was inside of the office but a few times.

Q. Have you the agreement of settlement between yourself & Perry Fuller here?

A. I have; and I produce it if I must produce it.

Q. Have you not been subpœnaed to produce it.

A. Yes, I have.

Q. Please then produce it.

A. I annex a copy of said agreement, marked Exhibit A, August 4th, 1870.

Cross-examined by pl'ffs' counsel, C. W. Nelson:

Q. When was this transfer of the Washington property made to Buckley?

A. The latter part of August or the beginning of September, 1869, after the settlement, at the request of Mr. Nelson & Mrs. Fuller, one or both—that request I don't recollect if it was in writing—I now recollect receiving a written request signed by Mrs. Fuller, and acknowledged before a notary, and sent to me by Mr. Nelson from Washington. In accordance with that request I transferred the property and executed the documents. When Mr. Nelson called on me, was the first time I had been approached with reference to the trust deed of the Washington property. I will not now swear that the execution of that deed formed part of the settlement with P. Fuller. All the terms of the settlement were embraced in that agreement. I don't think the execution of the deed was mentioned in the settlement. I may have that request of Mrs. Fuller. If I have I will produce it. At the time of this

523 settlement $5,196 00 cash was paid to Mrs. Fuller, and $10,900 in a note signed by myself, payable to the order of Mrs. Fuller. I don't remember taking any receipt from Mrs. Fuller. If I have any such receipt I will produce it.

Re-direct:

Q. In executing that deed at the request of Mrs. Fuller, did you act in the belief and understanding that you were carrying out the settlement?

(Obj'd to.)

A. According to my own conclusion, I did.

Q. Is that still your belief?

(Obj'd to.)

A. Yes, sir.

Re-cross:

Q. What led you so to believe?

A. According to my belief, on a final settlement with a man everything ought to be given up.

Q. Was anything said at any time during this settlement to induce you so to believe?

A. No, sir.

Q. Then it is simply your conclusion?

A. My conclusion.

L. STETTAUER.

And attached to the foregoing deposition is the following exhibit, marked Exhibit "A," August 4th, 1870, and referred to in said deposition, which said exhibit is in the words and figures following, to wit:

524 Articles of agreement made and entered into this 20th day of August, A. D. 1869, by and between Charles S. Stettauer and Louis Stettauer, of the city and county and State of New York, and Perry Fuller, of Washington, in the District of Columbia, Edward E. Fuller by his agent, the said Perry Fuller, and Alexander McDonald, of Little Rock, Arkansas, by his agent, the said Perry Fuller, witesseth:

Whereas the said Charles S. Stettauer, Louis Stettauer, Perry Fuller, Edward E. Fuller, & Alexander McDonald, are respectively members of the firm of C. S. Stettauer & Co., composed of Edward E. Fuller, Charles Ewing, and the other parties thereto;

And whereas the said Charles Ewing has executed and delivered to the said Perry Fuller an assignment of his interest in the profits arising from said copartneship, a copy of which assignment is hereto annexed, marked "A;"

And whereas the affairs and business of the said firm of C. S. Stettauer & Co. have been compromised and adjusted by and between the parties hereto, and on such adjustment and compromise, it is found that the net profits of the said firm and its outstanding debts and liabilities are as set forth in the schedule hereto annexed, marked "B;"

And whereas it appeared by a final settlement between the parties, that Perry Fuller was indebted to the firm of Stettauer & Brother in the sum of $39,236 50, for moneys loaned & advanced by them to him;

And whereas the last-named sum has, on such adjustment and compromise, been allowed and credited to said Stettauer & Brother,

525 as more fully appears by said Schedule "B," and has thereby been fully paid and satisfied;

And whereas on the said adjustment and compromise, the said Perry Fuller is found to be indebted to said Stettauers in the sum or balance of $29,351 84, as appears by said Schedule B;

And whereas it appears by said schedule, that the outstanding indebtedness of said firm amounts to the sum of $42,568 79;

And whereas the Merchants' National Bank, of Little Rock, Arkansas, collected from the Government of the United States, a large sum of money belonging to said firm, and on vouchers given under the Simerl contract to said firm, and which money the said bank has never paid to said firm, but still holds the same, and has heretofore agreed and undertaken to pay and discharge from out of the monies so received by it, the debts and obligations of the said C. S. Stettauer & Co., represented by the drafts hereinafter referred to as the Patterson drafts held by Simonson, Perkins & Co.;

And whereas Louis Stettauer holds the following-described property, in safe-keeping for the respective parties, as follows, viz: $5,196 00 dollars cash, and $10,900 00 cash, the proceeds of the sale of 100 shares of the Merchants' National Bank, of Little Rock, Arkansas, sold by him, all of which money is claimed by the said Perry Fuller to be the seperate property of Mrs. Mary Fuller, wife of the said Perry Fuller, but is claimed by the said Louis and Charles Stettauer to be the

526 property of the said Perry Fuller; and also the following described property of Perry Fuller, viz, 150 shares of the capital

stock of the National Bank of Fort Smith, Arkansas, two (2) notes of H. E. McKee & Co., payable to the order of P. Fuller & Co., for about $10,017 34 each, 50 shares of the Merchants' National Bank of Little Rock, Arkansas, $80 00 scrip' dividend of the Pacific Mutual Insurance Company;

Now, it is hereby mutually agreed between all the parties hereto, as follows:

First. The aforesaid copartnership of C. S. Stettauer & Co. is from henceforth dissolved and terminated, and each party hereto is released from the covenants and agreements in the articles of partnership, dated the 26th day of September, 1867, under which the same was formed, and the additional articles of copartnership, dated September 28, 1867.

Second. The affairs and business of the said partnership have been mutually compromised and adjusted on the terms and upon the representations contained in said Schedule "B."

Third. Neither of the parties hereto shall hereafter have any claim or demand in law or in equity against the other, arising out of the said articles of partnership, or out of or connected with the said copartnership, its affairs or business, except such claims and demands as either may hereafter have against the other arising out of some breach by him of some covenant or agreement contained in this agreement.

527 Fourth. The said Perry Fuller, in consideration of the premises and the execution of this agreement by the said Charles & Louis Stettauer and other valuable and sufficient consideration, hereby covenants with them, that he, the said Perry Fuller, has full power and lawful authority to execute and deliver this agreement, as the attorney-in-fact of the said Edward E. Fuller and Alexander McDonald; that all the facts hereinbefore stated are true; that the said Perry Fuller will pay over and account to the said Edward E. Fuller, and Alexander Mc Donald their full share and interest in the profits, property, and effects of the said partnership as may be due them, and that he, the said Perry Fuller, will, at all times hereafter, indemnify and save harmless, the said Charles S. and Louis Stettauer from all claims and demands of the said Edward E. Fuller and Alexander McDonald, for their share under his settlement, of the profits of said copartnership, and all costs and expenses which they may incur for or by means of any such claim or demand.

Fifth. The said Perry Fuller, for good considerations, covenants and agrees with said Charles and Louis Stettauer to assure and pay or discharge the sum of $29,351 84 of the outstanding indebtedness of said firm; that being the amount which he, said Fuller, is indebted to said Charles and Louis Stettauer, and upon the payment or settlement of said sum the said Fuller is to be discharged from any and all indebtedness to said Charles and Louis Stettauer.

528 Sixth. The said Perry Fuller further agrees to assume the following-named debts, or so much thereof as will amount to the sum of 29,351 84, that being the amount which said Fuller has hereinbefore assumed and agreed to pay, viz:

Andres Dold, for which an action by him is now pending in the Supreme Court	$9,857 98
Kingsbury drafts drawn by S. B. M. Holmes	$5,896 86
Simpson, Perkins & Co., represented by drafts drawn by Patterson on Stettauer & Co., am't'g to	16,307 98
Amounting in all to the sum of	$32,062 82

Which amount, less excess of $29,351 84, viz, $2,710 98, said Fuller agrees to pay or save said Stettauers harmless therefrom; and he further agrees to defend any and all actions that may be commenced against said Stettauer & Co., at his own proper cost and expense, to recover any sum or sums arising out of the claims herein assured by him.

Seventh. The said Charles S. and Louis Stettauer covenant and agree for a good and valuable consideration, with said Fuller, as follows:

I. The said Charles S. and Louis Stettauer agree to unite with said Fuller in a suit or suits, as may be necessary, to recover from said Merchants' National Bank, of Little Rock, Arkansas, the money hereinbefore mentioned, belonging to said firm, but now held by said bank, or any other action which, in the opinion of the attorneys of the parties hereto, may be necessary and proper to enforce any liability or cause of action of the said C. S. Stettauer & Co. against the said bank, and out of the money so recovered from said bank, the indebtedness assumed by Fuller
529 herein, or such part thereof as may then remain unpaid or discharged, shall be first paid and the balance, if any, remaining after such payment shall be paid to the said Fuller.

II. To assume and pay the sum of $13,216 95 of the indebtedness of said firm as described in Schedule "B," and therefore agree to assume and discharge the following claims:

A'mt to be paid Fuller, as excess of $29,315 84 in the claims assumed and paid by him	2,710 98
Draft drawn by Patterson on C. S. Stettauer & Co., and now or lately held by Goepp & Stern	1,000 00
Drafts drawn by Patterson on C. S. Stettauer & Co., & now or lately held by Andreas Dold, & other than those hereinbefore mentioned	$9,505 97

III. The said Louis Stettauer agrees to pay or turn over to Mary Fuller the $16 096 00 hereinbefore described as claimed to belong to her.

Eighth. The said parties hereto, to wit, Perry Fuller, in his own right and as agent or attorney for Edward E. Fuller & Alexander McDonald, of the one part, and Charles S. & Louis Stettauer of the other, covenant and agree to and with each other, that they will well and truly pay or cause to be paid or discharged the several claims of the indebtedness hereinbefore assumed by them, and that they will, at all times hereafter, indemnify and save harmless each unto the other, from any and all the said debts and obligations so assumed by them or either of them, and from all claims or demands arising therefrom, and from all costs, damages, and expenses to which they or either of
530 them may put or may incur by reason of the failure to pay or discharge any of the said debts or obligations by either of the said parties. And they further covenant and agree to and with each other, and declare that the outstanding debts and obligations of said firm of C. S. Stettauer & Co., are as set forth and described in the said Schedule "B," and that the obligations and liabilities stated in said schedule are all the outstanding obligations or liabilities of said firm known to them or either of them, and they and each of them declare that they know of no others now outstanding against said firm.

Ninth. The said Perry Fuller hereby further agrees, with the assent of his said wife, Mary Fuller, expressed by her in writing endorsed hereon, to leave the 150 shares of the capital stock of National Bank of Fort Smith, Arkansas, in the hands of Louis Stettauer, and all other securities and papers or property, whether owned or claimed to be owned by the said Fuller or his said wife, save and except the

$16,096 00 hereinbefore agreed to be paid to Mrs. Fuller as indemnity and collateral security, for and until the full performance of all and singular the covenants and conditions herein contained, and to be performed by and on the part of the said Perry Fuller; and, in case the same be not fully performed on or before the fifteenth day of December, A. D. 1869, the said Louis Stettauer may, at any time thereafter, without notice to the said Perry Fuller or Mary Fuller, sell and dispose of the said last-mentioned stocks and securities at public or private sale, for the best price he can obtain therefor, and hold the proceeds thereof in lieu thereof as such collateral security, and subject to the conditions aforesaid.

Tenth. The two attachments issued to the sheriff of the city & county of New York in the two actions in the supreme court, in favor of William Hayes and The Cherry Valley Bank, shall be withdrawn or caused to be withdrawn, discharged, or vacated by the said Perry Fuller before the said Louis Stettauer shall pay to the said Mary Fuller any part of the aforesaid $10,096 00.

Eleventh. The said parties hereto, to wit, Perry Fuller, in his own right and as the attorney or agent of Edward E. Fuller and Alexander McDonald, of the one part, and Charles S. Stettauer and Louis Stettauer of the other, covenant and agree to and with each other that, if there is any outstanding obligation or indebtedness against said firm and not included in Schedule "B," and which is known to either party and concealed from the other, then the party guilty of such concealment shall pay such indebtedness, and save harmless therefrom the other party from any claim or demand, or costs, expenses, or damages incurred by reason of such claim or demand; but should any claim or demand be hereafter presented against said firm, and which is now unknown to either of them, then such claim shall be paid as follows, ⅔ by Perry Fuller, & ⅓ by Charles & Louis Stettauer, such claim not being included in Schedule "B."

In witness whereof, the parties hereto, have hereunto set their hands and seals the day and year first above written.

C. S. STETTAUER,
By LOUIS STETTAUER, *Att'y.* [L. S.]
L. STETTAUER. [L. S.]
PERRY FULLER. [L. S.]
EDWARD E. FULLER, [L. S.]
By PERRY FULLER, *Att'y.*
A. McDONALD, [L. S.]
By PERRY FULLER, *Att'y.*

Sealed and delivered in presence of—
JOS P. FALLON.

[U. S. rev. stamps, 30 c.]

[U. S 5 c. st'p.]

Know all men by these presents that I, Mary Fuller, wife of Perry Fuller, and the person mentioned and described in the foregoing agreement, for a good and valuable consideration received from Louis Stettauer, hereby assent to the disposition of the stocks and securities, and for the purposes mentioned and described in the ninth article in the said agreement, and hereby ratify and approve of the same.

Witness my hand, this 20th day of August, A. D. 1869.

MARY FULLER.

In presence of—
CHA'S W. NELSON.

STATE OF NEW YORK,
City and County of New York, ss:

I, Joseph P. Fallon, a notary public in and for the State of New York, duly commissioned & sworn, and residing in the city of New York, hereby certify that, on this 20th day of August, 1869, personally appeared before me, Mary Fuller, to me known, and who acknowledged that she executed the foregoing instrument, and acknowledged that she executed the same for the uses and purposes therein mentioned, and of her own free act and deed.

533 And the said Mary Fuller, on an examination by *by* made, separate and apart from her husband, acknowledged to me that she executed the same freely and without any fear or compulsion of her said husband.

JOS. P. FALLON,
Notary Public Co. of N. Y.

Schedule A referred to in the foregoing agreement.

[5 c. U. S. int rev. st'p, cancelled. 5 c. U. S. rev. st'p.]

Whereas, on the 16th day of October, A. D. 1867, C. S. Stettauer & Co., of the one part, and the undersigned, Charles Ewing, made and entered into a certain copartnership agreement, bearing date the day last aforesaid;

And whereas Perry Fuller, on or about the 31st day of May, 1869, purchased all my right, title, and interest, of, in, and to all the gains and profits arising from and growing out of said co-partnership business, and transaction, and took from me a written assignment thereof, and did, at the same time, give to me his guarantee to indemnify and save me harmless of and from all the outstanding debts and liabilities of said firm:

Now, therefore, in consideration thereof, and of the sum of one dollar to me in hand paid, I hereby sell, assign, and transfer, and by these presents have sold, assigned, transferred, and set over unto the said Perry Fuller, and to his heirs and assigns, all my right, title, and interest of, in, and to the said copartnership agreement, and of, in, and to all the moneys, property, and effects of and belonging to said

534 firm of C. S. Stettauer & Co., and every part thereof, which said interest, so assigned, is claimed to be one equal third part thereof, with full power and authority to demand, have, and receive the same and every part thereof, as fully to all intents and purposes as I might or could do but for these presents.

This assignment is to be taken in connection with and in confirmation of the previous assignment made by me to said Perry Fuller.

In witness whereof I have hereunto set my hand and seal this 28th day of June, A. D. 1869.

CHARLES EWING. [L. S.]

In presence of—
JA'S A. ASHLEY.
F. SUNISON.

Copy assignment referred to in the foregoing assignment.

[5 c. U. S. int. rev. st'p, cancelled.]

I hereby assign to Perry Fuller, of Washington, D. C., any right I may have to any profits to which I may be entitled under a certain

agreement of copartnership, signed by C. S. Stettauer & Co., and myself, dated at Washington the 16th day of October, 1867, in consideration of his giving me a bond to indemnify me against all the debts of said firm.

Washington, D. C., May 31st, 1869.

CHARLES EWING.

535 SCHEDULE B.—*Statement covering the assets and liabilities and the receipts and disbursements made under Government contracts forming the basis of settlement between Charles S. & Louis Stetauer & Perry Fuller.*

[5 c't int rev. st'p.]

RECAPITULATION.

Receipts & disbursements made by C. Stettauer & Co.:		
Collections from Navejo vouchers		191,016 49
Collections & nett gain from other contracts		62,411 99
		253,428 48
Disbursements:		
Payment under Navejo contracts & dry-goods		129,756 40
		$123,672 08
Receipts & disbursements by Perry Fuller:		
Collections from Navajo vouchers		89,813 58
Collections from Buckley, Sheldon & Co		10,000 00
		99,813 58
Payments made under all contracts		74,084 82
		$25,728 76
Nett proceeds in the hands of each party:		
C. S. Stettauer & Co., is accountable for		123,672 08
Perry Fuller is accountable for		25,728 76
		$159,400 84
The contract owes Andreas Dold for Patterson drafts in his hands on		
Stettauer & Co., 9, 10, & 11, each 2,000	6,000	
Also one draft drawn by Patterson for	3,505 97	
Stern & Goepp	1,000 00	
Andreas Dold, P. Fuller & Co., acceptance	9,857 96	
Kingsbury ac. Campbell & Martin	5,896 86	
536 Swenson, Perkins & Co., 3 d'fts, each $5,435 97	16,307 98	
		42,568 79
		$116,832 05

DIVISION OF INTEREST.

½ of $116,832.05 to Cha's S. Stettauer & Co	38,944 02
⅔ of 116,832.05 to Perry Fuller	77,888 03
	$116,832 05

Perry Fuller in ac. with Cha's S. Stettauer & Co., contracts:		
To cash advances at various times		44,499 85
" " " " " "		63,737 98
" " surplus collection over payments		25,728 78
		133,966 59
CR.		
By payment on ac. contracts	5,031 05	
" " " "	629 67	
" " " "	3,559 97	
" " " "	17,706 03	
" ⅔ interest on gains	77,888 03	104,614 75
Due C. S. Stettauer & Co., contracts		$29,351 59

Also the articles of agreement attached.

Mr. Voorhies read another document attached to the same paper signed by Mary Fuller.

(Copied on page 532 of this transcript.)

Also a copy of the assignment referred to in the agreement. Also Schedules A & B alluded to in the agreement.

537 *Testimony of John F. Coyle.*

JOHN F. COYLE, being duly sworn on the part of the defendant, testified as follows:

Direct examination by Mr. Henderson, counsel for the defendant:

Q. Where do you reside?

A. Washington; I regard that as my residence, though I am now at New York, temporarily.

Q. How long have you been residing in Washington?

A. I was born there, sir; resided there for the last two years.

Q. What business were you engaged in, in Washington?

A. I was engaged as proprietor and editor of the National Intelligencer till 1865; previous to that, for some twenty-five odd years, I was the business man of the concern.

Q. Did you know Perry Fuller?

A. Yes, sir.

Q. Do you know Mr. Hayes?

A. I know him, sir.

Q. When did you become acquainted with Mr. Hayes?

A. I think the first time was in January, 1869, or February, either the last part of January, or the first of February, 1869.

538 Q. Where?

A. In my office, at Washington, sir.

Q. Did you have any conversation with him then?

A. Yes, sir.

Q. State what it was.

A. Well, I can scarcely recall it now, sir; he came to see me from New Orleans, with a message from Mr. Fuller; the conversation was upon that business, but I can't recall it at this late period.

Q. When did you see him again?

A. The next morning after the first visit.

Q. Did you have any conversation with him then?

A. No, sir; very brief.

Q. When did you see him after that?

A. I don't think I saw him—I am sure I did not have any conversation with him—until August, 1869.

Q. What time in August?

A. The 27th of August, on Friday; I am positive about it being Friday, but I may be mistaken about the date; but I don't think I am.

Q. Have you anything to refresh your memory on the subject of the date?

539 A. I was at Washington on Wednesday and left there Thursday in the night, and reached New York on Friday morning, and left again to meet an engagement I had at Buffalo, on Saturday, which is either the 28th or 29th—the 28th, I think, sir.

Q. Saturday was the 28th; you saw him then on Friday, the 27th?

A. Yes, sir.

Q. Did you have any conversation with him?

A. Yes, sir; I met him in the morning, that Friday, in front of Mr. Nelson's office while I was hunting for Major Fuller.

Q. What Mr. Nelson?

A. Mr. C. W. Nelson, No. 3 Pine st.

Q. This is the gentleman here, (pointing to a gentleman present.)

A. Yes, sir. And there asked him if he knew where I could find Maj. Fuller; he informed me where I would be likely to find him, at Mr Belters, in Warren street, where he was engaged in purchasing goods.

Q. Did you have any further conversation with him then?

A. The conversation was to the effect—I shall have to state the fact, if you desire it, almost in a narrative form.

Q. Well, sir.

540 A. On reaching New York that morning I met Mr. Clifton Hellen at the New York Hotel, and he informed me that——

Mr. BROADHEAD. You need not state that.

Mr. HENDERSON. Did you repeat what Hellen said to Hayes?

A. Yes, sir; I repeated the substance of it; that was my reason for hunting up Mr. Fuller.

Mr. HENDERSON. Go on, then, it is proper.

The WITNESS. Mr. Hellen informed me that Mr. Fuller had had a settlement with Mr. Stettauer, and upon hearing that I went to find Mr. Fuller, for the reason that he owed me some money. I met Mr. Hayes, as I told you, in front of Nelson's office, inquired where I could find Mr. Fuller, informed him my object in wanting to see him, and inquired of him about this settlement. He informed me that Maj. Fuller had had a settlement with Mr. Stettauer, and through his efforts a much larger amount of money was secured Mr. Stettauer than would have been under the settlement that was already progressing, which I had cognizance of. He advised me, however, not to ask Fuller for money as he had employed all the money he received from Mr. Stettauer in purchasing goods.

Q. Which who had employed?

541 A. Mr. Fuller had, in purchasing goods to take out to Kansas, where he would make a good deal of money, and be enabled to pay me afterwards. I left him, and went to hunt Mr. Fuller, and found him at Belter's, and asked him for the money, as he had promised to pay me when he made this settlement with Mr. Stettauer. He made some remark——

Mr. BROADHEAD. When was this conversation with Mr. Fuller—what time?

A. Within an hour after I saw Mr. Hays in the morning.

Mr. HENDERSON. Well, sir, state what he said.

WITNESS. I asked Mr. Fuller—informed him that I understood he had had a settlement with Mr. Stettauer, and that he promised to pay me; then asked him for some money. He repeated the same thing, that Mr. Hays had said, that he had employed all the money that he got from Mr. Stettauer, which wasn't so much as he expected to get, in purchasing goods to take to Kansas. I was rather imperative in my request for the money he owed me, and he made an engagement to meet me that evening at the hotel, in his room, in the St. Nicholas, at five o'clock, when he would give me all the money he could spare.

Q. Well, sir, did you see him?

542 A. At that hour I went there; yes, sir.

Q. Whom did you find there?

A. I found some gentleman whom I did not know in his room when I went there. He left soon afterwards, and Major Fuller and I had a con-

versation, and as he left there—a few minutes after he left—Mr. Hays came in, and, without observing me, or I don't know that he spoke to me, Mr. Hays commenced talking to Mr. Fuller without paying attention to my presence—if he spoke to me, I don't remember—about some insurance or something of that sort. I don't know the business. Major Fuller expressed some dissatisfaction, in an excited way, about the amount he had paid or had agreed to pay or something else. I felt no interest in it, and the conversation went on for some minutes, but I, having to leave on the half past six o'clock train, became impatient, and spoke to Maj. Fuller about the object of my visit. He repeated again to me that he had employed all his money in making these purchases which he had been engaged in in New York, and appealed to Mr. Hays to substantiate him in the fact that out of these goods he
543 would make a good deal of money, and, if I would wait until he returned in the fall to Washington, he would be able to pay all he owed me. I insisted upon having some money then, and in his appeal to Mr. Hays, Mr. Hays substantiated what he said, that they would make a great deal of money, and undertook to advise me not to press Maj. Fuller, which I paid no attention to at the time, and Major Fuller then went with me to the office at the hotel, and paid me a small amount of money, promising to pay me more the following week at Washington.

Q. Well, sir, did you have any further conversation with the parties?

A. I did not see Maj. Fuller again after that, sir; don't think I saw Maj. Fuller after that until his return to Washington in the winter. I left, as I told you, at half past six o'clock, for Buffalo, and returned to New York on the following Sunday.

(Mr. Broadhead objected to any conversation with Mr. Fuller that took place after the transaction, at Washington City.)

The COURT. (To Mr. Henderson.) Fix the time first.

Mr. HENDERSON (to the witness.) What time did you see Maj. Fuller again?

The WITNESS. I was going on to state——

544 Mr. BROADHEAD. He said he did not see him till the winter of 1869—the following winter.

The court admitted the testimony, telling the jury at the same time that, unless they found that Mr. Hays and Mr. Fuller were partners, then, whatever Mr. Fuller may have said in the absence of Mr. Hays was not to be taken against the plaintiff in this suit.

Mr. HENDERSON (to the witness.) State, then, the conversation that you had with Mr. Fuller about this matter, in reference to these goods.

A. That conversation was very general about it upon his first reaching Washington. If you remember, following upon the seizure of these goods, Maj. Fuller's arrest took place, and on his return to Washington—I think it was in January, it strikes me, but I am not positive about it; it was in the winter, as soon as he reached Washington—I saw him, and talked about it. He expressed a good deal of feeling against the gentleman who had occasioned the seizure of the goods.

Mr. BROADHEAD. State what he said, if you please.

WITNESS. I can't repeat the words, sir, but I can repeat the effect of them; it is impossible that I could state the words.

Mr. HENDERSON. State as far as you can.

545 A. The substance was that he had been treated very badly by Mr. Hellen, and Mr. Fantt had also induced Mr. Huntington to levy on the goods. I was authorized by Mr. Fant to correct that impression.

Mr. BROADHEAD. You need not mind that.

The WITNESS. He complained, I say, thereon of the parties whom he claimed to have been instrumental in having his goods seized.

Mr. HENDERSON. Whose goods?

A. His goods.

Q. Seized where?

A. Where they were seized—I don't know where they were seized. They were sold here.

Q. Did he state who it was that gave the information?

A. He stated to me that Mr. Hellen, and, as I was going on to state, Mr. Fantt.

Q. Well, what further took place?

A. It will not be proper for me to go on and say what I repeated to him.

Mr. HENDERSON. No, sir; Mr. Broadhead objects to that. If you stated to Maj. Fuller what Mr. Fant said, and he made a reply, you can state that.

A. Well, it has no bearing. It is simply to exonorate Mr. Fantt from being instrumental in having his goods seized. I was authorized to do so.

546 Q. And did you?

A. I did; and Major Fuller expressed himself very much gratified at the fact.

Q. Did anything else occur in regard to this suit and these goods?

A. Not at that time, sir. Soon after Maj. Fuller's return to Washington he informed me that a claim had been pending in the name of Mr. Chandler, and I recommended, at his request, that the matter should be put into the hands of Mr. E. L. Stanton, at Washington, for collection in the Department. Soon afterwards Mr. Huntington heard of Mr. Fuller having this claim there. I don't know whether he spoke to me about it, or whether he spoke to Mr. Fantt, but one or the other spoke to me about it, and I advised Maj. Fuller to give Mr. Huntington an order on this claim for the amount of money due the First National Bank, and thus release his goods, and aid him in getting his money through the Department.

Q. What did he say to that?

A. He agreed to it after some demurring, and that was the commencement of a negotiation between Maj. Fuller, Mr. Fantt, Mr. Huntington, and myself for the settlement of the case. It went on for sev-

547 eral months—I think two or three, possibly. During this period we had very frequent interviews—almost hourly. We had certainly daily interviews, and frequently several times during the day. Eventually we agreed upon the basis of a settlement with Mr. Huntington. It was to place in his hands an order from Mr. William J. Chandler, in whose name this claim was before the Treasury, for the amount due him, and so forth, a deed of trust which Maj. Fuller held against some property in East Tennessee belonging to Mr. Taylor, and the dismissal of the suit. That was the ground.

Q. The dismissal of what suit?

A. The dismissal of the Hays suit, which Mr. Huntington insisted upon from the commencement to the end of the negotiation that went on. That negotiation ended, I think, in April. I am not positive about that though. It may have been beyond that. It ended by Maj. Fuller withdrawing the Taylor claim, the Tennessee land; and while trying to settle it without that the Government interposed a claim of Maj. Fuller, and the matter fell through.

Q. What was the difficulty about the Tennessee claim?

548 A. It was collected, I believe, sir.
Q. By whom?
A. I don't know. It was transferred to Mr. Nelson, I believe, by Major Fuller.
Q. It had been transferred?
A. Yes, sir.
Q. Could Fuller get hold of it?
A. I don't know, sir; it was out of his power.
Q. Was Mr. Hays there?
A. No, sir.

Cross-examination by Mr. Broadhead, counsel for the plaintiff:

Q. Where do you reside now?
A. New York, sir.
Q. What business are you engaged in New York?
A. I am interested there in pavement co.
Q. Interested in it?
A. Yes, sir; I own stock in it.
Q. Do you hold an office in it?
A. No, sir; I am one of the stockholders.
Q. What business are you engaged in, I ask you?
A. That is all, sir.
Q. You are engaged in no business?
A. No, sir; in no business, unless you call that a business. I am engaged in organizing a company for the introduction of that pavement.
549 Q. You don't follow any particular calling, then, in New York?
A. No, sir.
Q. How long have you been in New York doing nothing?
A. I have not been doing nothing, sir; I have been pretty busy.
Q. How long have you been in New York?
A. Two years, nearly, sir, off and on. I have been to Washington.
Q. What business have you been engaged in since you have been in New York?
A. This business, sir.
Q. Altogether?
A. Yes, sir.
Q. Have not you been acting a clerk for Mr. Tweed in New York?
A. No, sir.
Q. No time?
A. No, sir.
Q. How long were you engaged as editor of the National Inteligencer?
A. From 1865 as owner and editor until April, 1869.
Q. In your own right?
A. In my own right, sir, as one of the editors and proprietors.
Q. Were you connected with the firm of Snow & Co. in Washington?
550 A. Yes, sir; I was one of the firm. Snow was the other. There was no co.
Q. Well, those are the proprietors of the National Intelligencer?
A. Snow and myself were the sole proprietors, sir.
Q. You were not the sole proprietor?
A. No, sir; I was not sole proprietor. Snow and myself were.
Q. You said awhile ago you were the proprietor.
A. I did not, sir.
Q. You commenced to edit the Intelligencer in 1865?

A. As one of the owners, sir. I was connected with that paper for about twenty-three years previous, sir. I went there as a boy, and grew up in the paper, and succeeded Mr. Gale.

Q. When did you first become acquainted with Perry Fuller?

A. I had known Maj. Fuller by reputation for several years before I became, as I could say, acquainted with him. I became acquainted intimately with him in 1868, sir.

Q. Were you conducting the Intelligencer in 1868?

551 A. Yes, sir.

Q. How long in 1868?

A. Up to the end of Mr. Johnson's administration—up to June, 1869, I think.

Q. The paper ceased in 1869, then, did it?

A. Yes, sir.

Q. How did Maj. Fuller become indebted to you in 1869?

A. Maj. Fuller became indebted to me, sir, in this way: In the fall of 1868, the collectorship of the port of New Orleans had been vacant for some time after the removal of Mr. Kellogg, or his withdrawal. Maj. Fuller sought my aid to obtain the office for him. Mr. Johnson, when I first applied to him to appoint Maj. Fuller, declined, but offered to appoint me; I declined, and made arrangements with Maj. Fuller to share its perquisites, and resigned in his favor.

Q. He was indebted to you for half of the profits of the office at New Orleans, then?

A. Yes, sir.

Q. That arrangement was made before he was appointed?

A. Yes, sir.

Q. You did not inform the President of that arrangement, did you?

A. No, sir.

552 Q. Did you keep any account of the proceeds of that office?

A. No, sir; I had no means of knowing what they were; I relied entirely upon Maj. Fuller.

Q. Did you ever make a memorandum of indebtedness?

A. No, sir; I don't think I ever did make any memoranda of it; I had no means of making it.

Q. Has the amount you claimed from him been paid?

A. No, sir.

Q. How much did you demand of him? You said you insisted on his paying you money?

A. What he said he owed me.

Q. How much did he say he owed you?

A. I think the balance was about $5,000.

Q. Did he ever pay you anything at all on that account—on account of the contract?

A. Yes, sir.

Q. When?

A. During the period he held his office.

Q. How long did he hold that office?

A. From the fall of 1868 to the 4th of March, 1869.

Q. Was he in Washington City during that time?

553 A. I don't think he was, sir—I don't remember that he was.

Q. When did he pay you?

A. During the period he was in office.

Q. How did he pay you?

A. I drew upon him.

Q. For how much?

A. $500 at a time whenever I wanted money.
Q. Whenever you wanted money you drew on him?
A. Yes, sir.
Q. And he honored the drafts?
A. Yes, sir.
Q. Now, how much did you draw on him for altogether?
A. I think he paid me about $8,000.
Q. You have no means of knowing what the profits were?
A. No, sir; I relied entirely upon his honor.
Q. And you claim $5,000 more?
A. He said that was due me, sir.
Q. Did he say that?
A. He said that, sir, on his return to Washington in April. I think he returned to Washington after his office expired there.
Q. Were you on intimate terms with him?
A. Yes, sir.
554 Q. During the whole time?
A. Yes, sir.
Q. Up to the time of his death?
A. We had had an unpleasantness, sir, but I had met him before his death and we had spoken.
Q. When did that unpleasantness commence between you and Mr. Fuller?
A. Well, sir, it commenced soon after he got out of the office, sir.
Q. That was in 1869?
A. Yes, sir.
Q. Did you have any personal difficulty with him?
A. No, sir.
Q. Had Maj. Fuller ever paid you any money before he went into the collectorship in New Orleans?
A. Yes, sir.
Q. When?
A. I can't recall—probably several months previous.
Q. How much?
A. Probably one thousand dollars, probably a little more; I don't know.
Q. Did he give it to you individually, or the firm of Snow and yourself?
555 A. Well, sir, he accepted a draft from us, which he subsequently paid Snow, Doyle & Co., and he also paid on one occasion, I think, sir, $300 to myself individually; that is my impression.
Q. What was the amount of that draft?
A. I think it was $800, sir.
Q. What date was that?
A. I cannot recall the date, sir; it was in 1868. It was during the period that Maj. Fuller was seeking the appointment of commissioner of internal revenue, to which he was appointed.
Q. How much did he pay you in New York?
A. $100.
Q. Whereabouts?
A At the St. Nicholas Hotel office.
Q. You did not go down to Buckley, Sheldon & Co's?
A. No, sir; he paid me at the cashier's office of the St. Nicholas Hotel.
Q. Did he pay you any afterwards?

A. I don't recollect that he paid me any afterwards; I am sure he did not afterwards; whether he paid me any before or not, I can't say.

Q. He never paid you any after the $100 he paid you in New York?

A. Not until he came to Washington the following winter.

556 Q. Did he pay you any then?

A. Yes, sir.

Q. On what account?

A. The same account.

Q. How much?

A. I think $200.

Q. Whereabout did he pay you that?

A. I can't recall, sir.

Q. You think he paid you $200?

A. That is my impression that he paid it by draft on Lawrence, Kansas.

Q. Handed it to you individually?

A. Yes, sir.

Q. How long did you say you were in New York when you went there in August, 1869?

A. I was there from about the latter part of June till the 27th of August, off and on. I was in the neighborhood with my children, and I was in the neighborhood and in and out of New York from day to day during that period.

Q. You did not have any of these conversations with Hays and Fuller until about the 27th of August?

A. I don't remember seeing Mr. Hays at all in New York, except upon the occasion I have already spoken of. I had frequent conversations with Mr. Fuller about his settlement with Mr. Stettauer.

557 Q. The first conversation I understood you to say was in the presence of Mr. Nelson and Mr. Hays.

A. No, sir; I did not say so.

Q. Was any one present?

A. No one was present, sir.

Q. Was any one present at the last conversation except yourself, Hays, and Fuller?

A. No one, sir.

Q. You left next morning for Buffalo?

A. I left that same evening for Buffalo at half past six o'clock.

Q. He paid you $100 that evening?

A. Yes, sir.

Q. And $200 the next winter at Washington?

A. Yes, sir.

Q. How long after was that?

A. I think it was in January he got back to Washington.

Q. Had you made any arrangements with Mr. Fuller to pay you the balance you claimed he owed you?

A. When he paid me the $100 he promised to pay my clerk, who was then settling up my business at Washington, $350 on the next week when he went there.

Q. But he has not paid it?

A. He did not pay it.

558 Q. What time in the winter did you see Major Fuller after this August conversation took place?

A. It was the second day after he got back, or probably the next morning, I can't recall it. It was in the holidays, I think; I am not positive about the period, only I know it was in the winter.

Q. When did you have the first conversation with him in regard to the settlement of this claim of Huntington of the First National Bank?

A. The first conversation occurred after I suggested that he should put that matter into the hands of E. L. Stanton, at Washington.

Q. What time was that?

A. I really can't say. Immediately after Major Fuller's return; within a week after his return; I think in January.

Q. What did you have to do with the settlement between him and Huntington?

A. I had nothing to do with it?

Q. Did you know of it?

A. I think I was trying to do it at the request of Major Fuller as his friend; well, I might say as a mutual friend.

Q. You had had difficulty with him previous to that?

559 A. Yes, sir. Well, we were very good friends, sir, at that time; we had had an adjustment of our difficulties, if you may call it so. It did not amount to a difficulty, yet he had treated me badly.

Q. And he asked you to act as his friend in the settlement of that matter?

A. Yes, sir.

Q. In the winter of 1869?

A. Yes, sir; in the winter of 1869–'70.

Q. Did any one act for Major Fuller?

A. Mr. Fant acted more for Mr. Huntington than Fuller. It was an attempt to settle this ten-thousand-dollar debt due the First National Bank of Washington.

Q. Did anybody else act in the matter?

A. Mr. Voorhies acted for Major Fuller as his next friend, I suppose, sir.

Q. You and Mr. Voorhies, then, were both acting?

A. Yes, sir.

Q. For Mr. Fuller?

A. Yes, sir. I was acting mutually I might say, sir.

Q. Well, what did you do in the matter?

A. I did not do much, except the fact that I would go between Major Fuller and Mr. Huntington. (Major Fuller and Mr. Huntington
560 had not then met with this proposition, also Mr. Voorhies' propositions.)

Q. You acted as a sort of messenger between the parties?

A. Yes, sir. You can put it in that shape, if you like. You can put it as offensive as you please; I can't resent it.

Q. What were you doing then?

A. I was then engaged in winding up my business of the Intelligencer.

Q. Nothing else?

A. Nothing else.

Q. Did that occupy all your time?

A. No, sir; it did not occupy all the time.

Q. Why, did not you settle that up in the spring of 1869?

A. No, sir. I have not settled it up yet.

Q. Did you have any means of your own at that time?

A. I had, sir, means of my own.

Q. Were you engaged before the Department in prosecuting any claim?

A. No, sir.

Q. You did nothing, except settling up the business of the Intelligencer?

A. Yes, sir,

Q. Major Fuller paid you $200 that winter?

A. Yes, sir.

561 Q. When was it this conversation took place in regard to this suit in St. Louis, or was anything said about the suit in St. Louis?

A. Yes, sir.

Q. When?

A. At that period.

Q. About what time?

A. It is impossible for me to fix the exact period, sir, but I think it was from January all through up to April. We were together nearly every day there while I was in Washington.

Q. Well, I want to know particularly when this conversation took place in regard to this suit in St. Louis?

A. That conversation was repeated. The subject of this suit in St. Louis was the theme of our conversation whenever we conversed about this business.

Q. How often did you converse?

A. I think every day, sir.

Q. Where was Mr. Fuller staying?

A. At his own house, I believe, until he disposed of it. Afterwards, up at the Capitol.

Q. Did you have any place of business?

A. I had not any place of business. I was at Mr. Fant's office, corner of Eleventh and Pennsylvania avenue, where Mr. Fuller came every day on this business.

562 Q. You met him there?

A. Yes, sir.

Q. Had you any interest in it at all?

A. Yes, sir. I had an order on Mr. Chandler for $2,000 out of it.

Q. Out of what?

A. Out of the money coming to Major Fuller on this claim before the Department.

Q. Well, I do not understand what claim you are talking about. I am asking you about the suit in St. Louis.

A. Well, you have not heard me.

Q. I ask you about this suit in St. Louis; what interest you had in this suit in St. Louis?

A. Not a particle.

Q. What interest did you have in the settlement of the Huntington claim?

A. Not a particle.

Q. Was any one to pay you anything for settling that claim?

A. No, sir.

Q. But you occupied nearly your entire time, and gave your entire attention to settle that claim, going between Fuller and Huntington?

A. No, sir; I did not say that. I would like to explain if you will permit me.

Mr. BROADHEAD. Well, sir.

563 The WITNESS. My interest in the settlement of that claim arose from this fact, that Mr. Fuller had a claim in the name of Mr. William J. Chandler, which was being prosecuted by Mr. Stanton, before the Department at Washington. Upon that claim I had an order

from Major Fuller for a certain amount of money due me by him. In order to get my money I was anxious to have this settlement, apprehending that Mr. Huntington could prevent the settlement of that claim without his claim against Major Fuller was paid.

Q. You were to have two thousand dollars out of that claim?

A. Yes, sir.

Q. Major Fuller had given you an order for that amount?

A. Mr. Chandler had.

Q. On what account?

A. On account of the five thousand dollars he claimed to owe me—which he admitted he owed me.

Q. In connection with the collectorship at New Orleans?

A. Yes, sir.

Q. You thought unless Mr. Huntington's claim would be settled he would not let this claim be allowed?

564 A. Well, I thought he might possibly prevent it. I apprehended it.

Q. Will you please state the first time that anything was said between you and Major Fuller in regard to the settlement of this Huntington claim?

A. Yes, sir; I can't speak as to the date. Soon after the ending of our compromise, to protect myself, when Major Fuller spoke to me about this claim; of course it was in the name, as I said, of W'm J. Chandler. He did not want Huntington, or anybody at Washington, to know that he had any interest in it. I think Mr. Stanton went on prosecuting the claim, it may have been a week or a month, until eventually I heard—I don't know from whom; certainly not from Mr. Huntington, however—that Mr. Huntington knew that Major Fuller had this claim going through the Department; and, hearing that, I went to Major Fuller and informed him, and advised him to give Mr. Huntington an order for the amount due him—due the bank—and thus secure Mr. Huntington's efforts in getting this money, which I regarded as powerful there.

565 Q. Well, sir, now will you please state when you first heard anything about the settlement of this attachment suit—when that was talked about first, and by whom?

A. At that period.

Q. You and Major Fuller talked about it?

A. Yes, sir; we could not have talked about the Huntington claim without talking about the attachment; it is one and the same thing.

Mr. BRODHEAD. No, sir; it is not.

The WITNESS. Well, I so regarded it.

Q. Do you know anything of a suit brought by Hayes, here in St. Louis?

A. I do not; only what I heard.

Q. Did you say anything in regard to that suit in your testimony-in-chief?

A. No; I don't think I did, sir.

Q. It was a dismissal, then, of an attachment suit brought by the First National Bank?

A. It was the attachment suit, or the Hayes' suit, which was a dismissal of everything here.

Q. What was said by Major Fuller in relation to that levee that you have spoken of in your examination-in-chief in reference to the dismissal of a certain suit that you spoke of?

566 A. Major Fuller made an agreement, after several weeks of

intervening propositions, that was accepted by Mr. Huntington, and which was this: The dismissal of the Hayes suits at St. Louis; an order upon the Treasury Department for the amount of his claim, and Huntington had not much faith in the passage of that claim by the Government, or expected it would be delayed; and the conditional security which he insisted upon of a deed of trust upon the East Tennessee lands.

Q. I want you to state a little more definitely, if you please. You speak about the dismissal of the Hayes suit; I asked you a while ago was that the first that you heard of the Hayes suit?

A. Yes, sir; that was the first that I heard of the Hayes suit mentioned in that way, written out; we had a written agreement. It was drawn out, this written proposition.

Q. Who had the writing of that proposition?

A. That was written and submitted to Mr. Huntington at the request of Major Fuller; by Mr. Fant, I think, it was written. I know, sir, it embraced all this.

Q. Well, you read that proposition?

A. Yes, sir; and I left it with Mr. Huntington, I believe; that is my recollection.

Q. Was Major Fuller present when that was drawn up?

567 A. Yes, sir.

Q. Was it submitted to Mr. Huntington?

A. Yes, sir.

Q. Were you present when it was submitted?

A. I submitted it.

Q. Who else was present.

A. I do not know that anybody was.

Q. Where is that writing?

A. I don't know, sir.

Q. You are undertaking, then, to give the contents of the written instrument drawn up between Fuller at that time?

A. That was the memorandum of it, sir, which was not carried out.

Q. Was it signed by anybody?

A. No, sir.

Q. Who made the memorandum?

A. I think Mr. Fant made it, sir.

Q. Where did he make it?

A. At his office.

Q. Were you present?

A. Yes, sir.

Q. Did you read it over?

A. Yes, sir.

Q. Who else was present?

A. Major Fuller was present; Mr. Voorhies was present, I think, sir, on one occasion. I am not positive about Mr. Voorhies.

568 Q. Then you, Mr. Voorhies, Mr. Fant, and Major Fuller were present?

A. Yes, sir.

Q. Now what was the substance of that memorandum which you have undertaken to state?

A. The substance was that Major Fuller should give an order, or rather Mr. Chandler should give an order upon the Treasury for the amount of the Huntington claim.

Q. Major Fuller should give an order on the Treasury?

A. That Major Fuller bound Mr. Chandler to give it. The claim was in Mr. Chandler's name; do you understand that?

Q. What right had Chandler to make an order on the Treasury Department?

A. Because he had a claim before it, a claim which was being prosecuted through the Department then.

Q. Well, now go on.

A. The dismissal of the Hayes suits at Saint Louis.

Q. You say he was to give an order on the Department for the amount to the First National Bank?

A. Yes, sir.

569 Q. And, then, what next?

A. I was then going to inform you.

Q. Well, let us have it. You said the dismissal of the suit; I don't know what you mean by the dismissal of the suit. Was that part of the memorandum written it?

A. Yes, sir; I am getting to that if you will allow me to get there. Now, shall I go on?

Mr. BROADHEAD. Yes, if you will be a little more definite in your statement.

The WITNESS. Well, I am trying to. Now, then, the second; because there are, I think, three heads of the settlement; the other was a dismissal of the Hayes suits at St. Louis—or suit—whichever it was. I don't know whether it was one or two.

Q. Well, now, you say dismissal; dismissal by whom? Was anybody stated as to who was to dismiss?

A. No, sir. Mr. Fuller assumed the right, I suppose, as he was the only one that was there.

Q. Well, go on.

A. They told Mr. Huntington all the time of a deed of trust for some amount from N. G. Taylor, in East Tennessee, worth, as was represented, about the amount of Huntington's claim, in our proposition I submitted to Mr. Huntington for Major Fuller.

570 Q. What was that assignment of the Tennessee property for?

A. As conditional security. Mr. Huntington had not sufficient faith in the claim against the Department.

Q. That, then, was the substance of the memorandum that was made out?

A. Yes, sir.

Q. You are positive about that?

A. I am pretty positive about it.

Q. Are you sure it mentioned the Hayes suit?

A. Perfectly sure of that, because Mr. Huntington would not listen to anything until those suits were embraced in the settlement; that is, the dismissal of them.

Q. What had Mr. Huntington to do with this attachment suit; was anything said about that?

A. No; I don't know whether they were separated or not.

Q. Do you know that there were two suits?

A. I do not.

Q. Did you know that there was a suit against Perry Fuller?

A. I knew that there was an attachment against him.

Q. Did you know there was a suit in favor of Hayes?

571 A. Well, I was not aware of that, until subsequently; I don't think I knew of that then. I presumed the dismissal of the Hayes suits embraced all that.

Q. Did you suppose that Hayes brought suit against the First National Bank?

A. I did not suppose anything about it.

Q. You did not know anything about it?

A. No, sir.

Q. You read that memorandum over?

A. Oh, yes, sir; several times.

Q. But you did not know that there were two suits?

A. I don't think I did.

Q. You regarded the dismissal of the Hayes suit as nothing?

A. The suits of W'm Hayes, at St. Louis, that was what was said.

Q. You did not know that the First National Bank of Washington had brought suit by attachment against Perry Fuller?

A. Of course I did—certainly; and Mr. Huntington was to release that attachment; that was one of the terms.

Q. Well, you did not recollect that before?

A. Excuse me; I think I did so state, I beg your pardon.

572 Mr. BROADHEAD. No, sir; you did not say anything about it; he was to release the attachment then against Hayes' goods?

A. Certainly.

Q. That was part of the arrangement?

A. Certainly, upon Mr. Fuller's goods. I was acting for Mr. Fuller. I did not know Mr. Hayes in the case at all.

Q. You spoke of the Hayes suit awhile ago?

A. The Hayes suit was mentioned, but I was acting for Mr. Fuller. I did not know Mr. Hayes?

Q. You did not know anything about Mr. Hayes?

A. No, sir.

Q. You did not know Mr. Hayes had claimed those goods?

A. Oh, certainly, I knew that. What I mean is that Mr. Fuller was the only person that I was acting for. I did not know anything about Mr. Hayes.

Q. But you knew that Mr. Hayes claimed those goods?

A. Certainly, I knew that.

Q. Did not you know that he and Voorhies was the attorney for Mr. Hayes in the matter?

A. I believe I knew that subsequently.

573 Q. Was not Mr. Hayes' name mentioned time and again in relation to that matter in your presence?

A. Oh, Hayes' suit was mentioned, certainly.

Q. You said awhile ago you did not know anything about Mr. Hayes?

A. Well, I am only considering.

Q. Well explain what you meant?

A. I spoke of myself and Mr. Fant. He was engaged in the operation. We looked upon Maj. Fuller, really, as the only man to transact the business with.

Q. I do not want your opinion at all.

A. Well, that is the only reason I say why we spoke about it.

Q. Was the part of the condition of this arrangement insisted upon all the time in the presence of Mr. Voorhies, that Mr. Hayes' consent was to be obtained to this arrangement?

A. I never heard it, sir.

Q. You never heard of that?

A. No, sir; I felt perfectly sure that Mr. Fuller and Mr. Voorhies were authorized.

Q. Did you hear Mr. Nelson's name mentioned in connection with it?

A. I heard his name mentioned—yes, sir.

Q. Was not one of these settlements delayed for two weeks
574 until Mr. Nelson would reach Washington to help as assistant attorney of Mr. Voorhies?

A. I don't remember about that.

Q. Now, was not this the substance of that memorandum that you speak of that was made on this occasion; that Mr. Fuller should make some arrangement to pay the debt of the First National Bank out of this claim, that Mr. Hayes' goods should be released in St. Louis; that Mr. Hayes should not bring suit if his goods were released upon that attachment-bond; was not that the arrangement that was made?

A. That was not the arrangement.

Q. If Mr. Hayes would agree to it?

A. That was not the arrangement. It was just exactly as I say. I saw that paper, and it is on that account that I speak so confidently about it.

Q. That was not the arrangement?

A. No, sir. It may have been in substance that, but I speak merely of the reading in the agreement. Of course the understanding was that Mr. Huntington was to release these goods.

Q. In this conversation did not Maj. Fuller state, in the presence of Mr. Voorhies, over and over again, and Mr. Nelson, that he had no control over those goods of Mr. Hayes', and that if he made this ar-
575 rangement that Mr. Hayes must be consulted in regard to it?

A. No, sir.

Q. That he had no interest in those goods, at all?

A. No, sir; I remember plainly of Maj. Fuller being ready to settle at any moment, and to have that matter amicably settled by the withdrawal of that Tennessee security. When that settlement ended, on the afternoon it ended, he went to Mr. Huntington, Voorhies, and myself.

Q. Well, you have not answered my question yet?

A. I did, sir.

Q. Did not Maj. Fuller state, over and over again, that he had no control over those goods of Mr. Hayes; that Mr. Hayes must be consulted in the settlement; did not he say so in the presence of Mr. Nelson, Mr. Voorhies, and yourself?

A. No, sir; I don't think he ever said so.

Q. Are you certain?

A. I don't think he did; I won't say positively that he did not, but I have no recollection of it.

Q. Do you recollect of Mr. Nelson being there during this negotiation?

A. Yes, sir.

576 Q. Do you recollect when he came?

A. I recollect finding Mr. Nelson at Mr. Voorhies' house the first time I went there after Major Fuller's arrival from St. Louis, in the winter of 1869. The very day, I think, after he got home I found Mr. Nelson then there. I understood Mr. Nelson's absence was occasioned, or the delay was occasioned, in the negotiations that went on, by Mr. Nelson's absence, because to him Mr. Fuller had assigned this property in East Tennessee.

Q. What do you say was the cause of that arrangement falling through?

A. The withdrawal of that security.

Q. Which security?

A. The deed of trust on the land in East Tennessee.

Q. Who withdrew it?

A. Maj. Fuller, I suppose.

Q. How long after this memorandum was made out and carried to Mr. Huntington, was that withdrawn?

A. I guess a month or so elapsed—several weeks.

Q. Well, you made no effort to settle under that arrangement?

The WITNESS. You mean after the withdrawal of that?

577 Mr. BROADHEAD. Before, you said it was a month before the withdrawal of that security.

A. Well, in the meantime, we were in constant consultation about it every day, pretty nearly.

Q. You acted in this matter as the friend of Maj. Fuller, did you?

A. As the mutual friend, sir; mutual friend of both parties.

Q. Did you have many conversations with Major Fuller about it?

A. Yes, sir; very many.

Q. Are not you mistaken in supposing that you were on speaking terms, with Mr. Fuller, at any time during the winter of 1869, '70?

A. No, sir.

Q. Have not you told Mr. Voorhies over and over again that at that time you were not on speaking terms with him?

A. No, sir; during the period of the negotiation, if it was 1869 and 1870, Mr. Voorhies, Maj. Fuller, and myself were meeting nearly every day.

Q. You had no quarrel with Maj. Fuller—no personal difficulty?

A. At that period; no, sir.

Q. Did you make any threats against him—against Maj. Fuller?

578 A. No, sir; he made threats against me during the time we were not very good friends.

Q. You made none against him?

A. No, sir; I am not in the habit of making threats.

Q. What time was it that these negotiations broke off?

A. It was in April, I think, sir, or later, perhaps. I can't say. For several months they were pending.

Q. I will ask you, if you did not write a letter to Maj. Fuller, in 1869, stating that it was through your influence that those goods were seized, and that you regretted it now?

A. No, sir.

Q. By a JUROR. You say you got a draft for one hundred dollars, payable at what banking-house in New York?

A. I did not get any draft, sir.

By the SAME. You got money?

A. Yes, sir; from the office at the Saint Nicholas Hotel. Maj. Fuller went with me from his room to the office.

Q By Mr. BROADHEAD. You spoke of a draft on a bank at Lawrence?

A. I spoke of it afterwards; that was in the winter following.

579 *Testimony of Hamilton G. Fant.*

HAMILTON G. FANT, called for the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. Henderson:

Question. Where do you reside?

Answer. In Washington City.

Q. How long have you resided there?

A. Since 1847.
Q. Are you acquainted with Major Fuller?
A. Yes, sir.
Q. With William Hayes?
A. Yes, sir.
Q. When did you become acquainted with Perry Fuller?
A. About fifteen years ago, sir.
Q. When did you become acquainted with William Hayes?
A. Two or three years, I think—I am not certain—probably two years ago.
Q. Were you present in New York during the time of this settlement with Stettauer?
A. Part of the time I was.
Q. By whom were you called there?
A. In a suit in Washington City, in which Mr. Fuller, Mr. McDonald,
580 and Charles Ewing were involved, growing out of a partnership with Stettauer, the man you refer to. Mr. Ewing called upon me to endeavor to settle it. After having done so, Mr. Fuller requested me to visit New York to endeavor to bring about a settlement between him and Stettauer. When I reached New York, he informed me that he informed Mr. Nelson and his partner, and that they had prepared a bill for the suit. I told him if that bill was filed, I did not see any possibility of a settlement, but if that was withdrawn, I would endeavor to bring about a settlement. He instructed Mr. Nelson to withhold that bill, and I saw Mr. Stettauer, and after a lengthy—well, some two or three weeks negotiation with him, I left, and he informed me that it was so far progressed that he would bring his friend, Mr. Hayes, to New York. It was not concluded by me, but afterwards Mr. Hayes took hold of it, and I believe completed the negotiation.
Q. Had you any conversation with Mr. Hayes?
A. I had none with Mr. Hayes.
Q. Did you have any conversation with Mr. Fuller about July or August?
A. In July, 1869, I had with Mr. Fuller.
Q. State what that was.
581 A. That was probably the latter part of June. I commenced this negotiation with Stettauer, and he expressed to me great apprehension, Mr. Fuller did, of the Government.
(Objected to.)
Mr. BROADHEAD. State in reference to the purchase of these notes, or the account of Stettauer & Co.
The WITNESS. It had reference to the accounts, especially of Stettauer & Co., and what Stettauer & Co. owed him. He said he had great apprehension of Government; that he wanted this matter settled, lest the Government might intervene and attach whatever money was coming to him from Stettauer & Co.; and for that reason I pressed him not to proceed in that suit. I thought a settlement might be brought about otherwise, without the intervention of a suit; and at my instance he authorized that course to settle it without a suit.
Mr. HENDERSON. What did the Government have against him; did he explain?
A. I don't think he defined what it was, but he seemed to have some apprehension of the Government.
Q. Do you know, from any conversation you had with Mr. Fuller what it was?
582 A. No; I do not think that he defined to me exactly what it

was. He was apprehensive that the Government might attach whatever was coming to him from any quarter, and he wanted to place it out of the power of the Government to do so. That was my inference.

Mr. BROADHEAD. We do not want your inference.

Mr. HENDERSON. No; state what he said about that, in regard to his property in connection with the Government. First repeat to the jury what you stated.

A. Well, I believe that was about the substance. He said he had apprehension of the Government seizing and attaching whatever he had. For what purpose he did not explain to me; and in that view he wanted to get it out of the reach of the Government, to place it out of his hands, out of reach of Government.

Q. Now, did you have any conversation about this Hayes attachment with him—Hayes' attachment against Fuller; it is usually called the Hayes' attachment against Stettauer?

A. Well, he told me that he had requested Mr. Hayes, or got Mr. Hayes to leave the attachment upon whatever money there
583 might be in Stettauer's hands.

Q. What for?

A. To prevent the Government or any creditor from intervening to place it out of his hands.

Q. What time was that?

A. I think that was the latter part of July; before I left New York.

Q. Repeat his language, as near as you can, to the jury?

A. It is so long a time ago, it is difficult to state his language.

Q. Well, give the substance of it?

A. He told me that he had got Mr. Hayes to place the attachment upon Stettauer, and that it could be relieved when the settlement they were then negotiating was concluded. I, in the meantime, had retired from the negotiation, and Mr. Hayes had taken my place in the matter with Stettauer, and when the money was ready to be paid he would cause Hayes to relieve the attachment and get his money. That was all that occurred in New York.

Q. Now, when did you see Major Fuller again?

A. In the winter, I think, of 1870, or probably the spring of
584 1870; probably February or March, I can't tell; he called at my office.

Q. Did you have any conversation with him?

A. Yes. sir.

Q. What about?

A. He called to see me in relation to this suit here in Saint Louis.

Q. What did he say?

A. He seemed to be under the impression that I could, with my acquaintance with my friend, Mr. Huntington, bring about some settlement of the matter—relieve this attachment. And he was anxious, he said, to settle; and that he was in condition to do so. And many other things he named—that he had a claim pending in the Department, which claim was in the name of William I. Chandler, amounting to some forty odd thousand dollars; a large amount, but that much I remember. He seemed to regard that as a certainty—the forty odd thousand dollars. And that he had employed, through Mr. Coyle, Mr. Stanton, the son of Secretary Stanton, to endeavor to get it through the Department: Mr. Stanton representing this gentleman, Mr. Chandler. He also mentioned, which he had previously referred to,
585 a note of Mr. Taylor, secured by a deed of trust, in Tennessee, and which his attorney, Mr. Nelson, seemed to have been anxious

to fix up. It was unsettled as to the amount; and he said that Mr. Nelson had brought it down to have, I think, some ten thousand dollars of it secured by a deed of trust, probably in the name of Mr. Nelson, payable to Mr. Nelson, his son-in-law. With that note and this claim of Chandler, he proposed to secure Mr. Huntington. And in the course of this negotiation it was necessary that the whole matter should be settled.

Q. What whole matter?

A. That this attachment—Mr. Huntington's attachment—should be removed, and the Hayes suit dismissed, and Huntington provided for by this lien upon the Chandler claim, and this note down in Tennessee. But before it was reduced to a memorandum even, Mr. Nelson, he stated, had collected then, I think, the Tennessee claim; or, it was in such a way that he could not give it as security; and it was then that I consulted Mr. Huntington, and I advised him to take the Chandler claim, as from all I could learn from Mr. Stanton the claim was a good one, and it turned out afterwards that it was.

586 Mr. Huntington then agreed to leave out the Tennessee matter and take the Chandler claim. Then the memorandum was drawn out in my office to that end; that the payment of the First National Bank should be secured by a lien upon this Chandler claim, Mr. Stanton to collect it. The Hayes suit was to be dismissed as well as the attachment of the First National Bank. We had various interviews. Mr. Fuller always came into my office, and I was really the friend to both parties, without any consideration except to settle the matter. When it came to that point it failed: First, because the Tennessee note was left out; and second, Mr. Huntington, feeling a little dubious of Fuller, called on me and went up into the Interior Department, and there discovered that Mr. Fuller was indebted to the Indian Department some twenty odd thousand dollars. And the Government had found out that this Chandler claim was Mr. Fuller's, and so much of it as would cover the claim the Government had, and they stopped payment of that claim. It was then that Mr. Huntington says, "I will have nothing more to do with it, and we will seek our remedy elsewhere."

587 Q. Was Mr. Hayes there?

A. No, sir; he was not there.

Q. Did Mr. Fuller consent to this arrangement to dismiss the Hayes suit?

A. Yes, sir, unconditionally, on the terms I have mentioned: first dropping out the note which had been collected by Mr. Nelson, the son-in-law, and then this lien of the Chandler claim.

Q. Did he say anything to you about the attachment of those goods here—whose goods they were, Mr. Fuller?

A. No, sir; he did not. There was nothing said on that subject.

Q. For what purpose did he say he came to Washington?

A. Well, he did not say for what purpose.

Q. How long after he got there was it before he called on you?

A. I can't say; probably a month. I don't know; I can't tell anything about it. I only know he called on me.

Q. Do you know whether he made any complaints?

A. Well, I only know of it through Mr. Coyle.

Q. Did you talk with him about it?

A. I don't think I did. He was under the impression that I

588 had instigated Mr. Huntington to attach his goods in New York.

(Objected to.)

Mr. Coyle told me he had received a letter from Mr. Fuller.

Q. By the COURT. Did you and Mr. Fuller have any conversation?

A. I do not remember.

By Mr. HENDERSON. Q. Do you know any other facts connected with this matter, Mr. Fant?

A. No, sir, I do not. I will mention that in New York this bill, that had been prepared by Mr. Nelson, embraced the securities that Mr. Fuller claimed of Mr. Stettauer afterwards. It was asserted against Stettauer as the property of Mrs. ——.

Q. By Mr. BROADHEAD. Are you speaking of the record?

A. I am speaking of this bill that was read to me by Mr. Nelson.

Mr. BROADHEAD. We don't want that.

Q. By Mr. HENDERSON. The bill was not filed?

A. I don't know whether it was or not.

Q. What business have you followed in Washington?

A. Banking business for the last twenty years.

589 Cross-examination by Mr. Voorhies, counsel for the defendants:

Q. You remember the occasion of my calling on you, on the corner of Tenth street, on the avenue, up stairs, before you moved in your present banking-house?

A. Yes, sir.

Q. Do you remember my stating to you there that these negotiations would be subject to the approval or disapproval of Mr. Hayes; that he alone could govern this litigation here in regard to his goods; that, as a matter of course, that if that debt was paid to the bank, then this attachment would fall to the ground, and with it this present litigation; and all there was to control Hayes was to get him to forbear bringing an action for damages, because, if the debt was paid to the bank, the attachment here would no longer bind the goods, and the goods would be released, and to get him to forbear bringing an action for damages; and don't you remember my telling you, as his attorney, I had been one of the original counsel here; that it would be subject, at last, to his approval, but that I thought I could get him clear?

590 A. I remember the interview, Mr. Voorhies. I recollect very well the earnestness you showed in that matter; but Mr. Hayes never made a great impression on my mind. I always regarded you as the attorney and friend of Mr. Fuller.

Q. Well, I was Mr. Fuller's attorney. Wasn't I also Mr. Hayes' attorney?

A. I don't know that you stated so. He did not make any impression on my mind. I was dealing with Mr. Fuller in all things, and we regarded Mr. Hayes as a kind of mediator in the matter.

Q. I am not asking you how you regarded him; that is not a fact in the case; it is not evidence. I asked you if you did remember my telling you, as Hayes' attorney, that this negotiation would at last be subject to his approval or disapproval. Now do you or not remember the occasion that I called upon you, telling you that, while I favored these negotiations, and desired a settlement, and desired the payment of the Huntington claim in the National Bank, (Fuller's bank,) that still it would be subject, so far as the thing of litigation was concerned here, to Mr. Hayes' approval or disapproval?

A. You undoubtedly mentioned Mr. Hayes, and as his attorney, *and as his attorney*, no doubt of that.

591 Q. It seems that Mr. Hayes did not make much impression upon you. I hope I will make more than he does; I will ask you

again whether I did not go in as Mr. Hayes' counsel and say to you that, while I desired very much this settlement between the parties, Fuller and the National Bank, yet, as Mr. Hayes' attorney, I informed them that all was subject at last to his approval or disapproval, and he had control of the litigation in regard to his goods?

A. You certainly mentioned Mr. Hayes. You came as the mover of that thing. At the same time you told me that you had all the power to act in the matter.

Q. As his attorney?

A. As Mr. Hayes' attorney.

Q. Well, that is between you and me, of course.

A. You may have stated a great deal more about Mr. Hayes; you did not make any impression on me.

Q. I have no doubt I said to you that I thought I could get Mr. Hayes to agree to it.

A. No; you told me distinctly you could arrange it.

By Mr. BROADHEAD. Q. What time were you in New York?

A. In July, I think. I am not clear upon that point, whether
592 in the latter part of June, or in July.

Q. Was that the time you went to make the Stettauer settlement?

A. The time Mr. Fuller requested me, having settled this matter for Mr. Ewing, in Washington, that he was connected with, and being connected with Stettauer, I suppose he thought I might be of some service in that matter, and I went there in the latter part of June I think.

Q. What time did you leave New York?

A. Well it must have been early in July, but as to dates I can't remember now but I think the settlement was postponed. I had several interviews with Mr. Stettauer. He stated the securities that I was seeking, which were embraced in this bill, were in Leavenworth somewhere, and we gave him to sometime in July for their return. And I was to get back in New York in time to proceed with the negotiation.

Q. Do you recollect when Stettauer was arrested. Did you leave the night he was arrested?

A. Yes, sir; I believe it was the night; I believe it was that night I left.

Q. What time was it in reference to the time that you had this conversation with Mr. Fuller?

593 A. It was before that, I think. Probably it may have been at my interview. I can't tell whether it was after my return to New York or before; it is almost impossible, for it made no impression on my mind.

Q. That was last June, then, or early in July?

A. Yes, sir; I think so. That is merely a matter of opinion. The fact existed, but whether to place it in the middle of July, the first of July, or in June I can't say. It was not fixed on my mind at all.

Q. You said you advised Mr. Fuller against bringing the suit against Stettauer?

A. Yes, sir.

Q. Don't you know that suit was brought by him?

A. I do not know that it was. I think he arrested him. They had a bill drawn there, an amended bill, and I received it; but I don't think that suit was brought. The bill that I referred to a few moments ago was never filed. I told him that if that was filed they never would have a settlement, and they seemed anxious to have a settlement.

There might be an attachment of some kind filed afterwards; I don't know.

Q. Do you recollect of Mr. Nelson's being in Washington at
594 the time these negotiations were going on in regard to the settlement?

A. I saw him on one occasion. He had been down to Tennessee about this matter of Mr. Voorhies, the Tennessee note, and on his way he was in Washington, and I met him at the First National Bank. I might have seen him afterwards.

Q. He went over to your house did he not?

A. Yes, sir; I think he did.

Q. And Hayes, he was over there in regard to that matter?

A. Yes, sir; he was over there with Mr. Fuller. Mr. Nelson was over there with Mr. Fuller and Mr. Coyle, I think.

Q. Wasn't Mr. Hayes' connection with this matter mentioned then by Mr. Fuller?

A. Very likely it was; I can't tell.

Q. Did not he say he would not undertake to control Mr. Hayes' business?

A. He might have said so, but I don't know; I can't tell; I had Mr. Fuller in my mind all the time.

Q. Was not the settlement postponed until Mr. Nelson would get there to act for Mr. Hayes?

A. I think no settlement was postponed for Mr. Hayes. I think Mr. Voorhies and Mr. Nelson were always prepared to settle.

595 Q. Did not Mr. Fuller say he would not settle till Mr. Hayes came there or some one to represent him?

A. No, sir; I think Mr. Voorhies had the power to settle.

Redirect examination by Mr. Henderson:

Q. This conversation that you had with Mr. Voorhies, that you had in regard to Mr. Hayes, you looked upon in the Pickwickian sense with regard to—

(Mr. Broadhead objects to the question.)

Mr. HENDERSON, (to the witness.) Well, stand aside.

Testimony of Waddy Thompson.

WADDY THOMPSON, being sworn for the defendant, testified as follows:

Examined by Mr. Henderson, counsel for the defendant:

Q. Where do you reside?

A. At Memphis, Tennessee.

Q. What is your business?

A. I am in the grocery business, and also have a nursery and flower garden.

Q. Did you know Perry Fuller?

596 A. Yes, sir.

Q. How long?

A. Since the fall of 1868, I think, personally; I had known him for some time before that.

Q. Do you know Mr. Hayes?

A. Yes, sir.

Q. How long have you known him?

A. I think I met Mr. Hayes in New Orleans during the winter of

1868-'9; I am not positive whether I made his acquaintance or not; I think I saw him about the custom-house, and my impression is I was introduced to him.

Q. Were you in New York in July or August, 1869?

A. I was there during the summer of 1869, whether in July, August, or June, or as late as September, I do not know. I do not think it was as late as September. I was only there once during the summer, & I was there in the fall some time; I was there during the summer of 1869, though.

Q. Did you see Mr. Fuller there?

A. Yes, sir.

Q. Did you see Mr. Hayes there?

A. Yes, sir.

597 Q. What were they doing?

A. They seemed to be fitting up some kind of settlement.

Q. With whom?

A. I learned the names then, & since I have come here I heard the names mentioned, but I had forgotten them. I will state that at the time I gave my deposition, I had forgotten the names, but hearing them mentioned here has refreshed my memory, & I think they are the names that have been called here several times.

Q. Stettauer?

A. Yes, sir; that is one, it seems to me.

Q. Did you have any conversation with Mr. Fuller?

A. Yes, sir.

Q. With Mr. Hayes?

A. Yes, sir; a good deal of conversation with both of them.

Q. Where?

A. Well, the principal part of it was at my room in the St. Nicholas Hotel.

Q. You stopped there?

A. Yes, sir.

Q. State what it was?

A. There was so much of it that it would take me some time.

598 Q. Did you have any conversation with them in regard to the purchase of goods?

A. Yes, sir.

Q. State the first conversation you had upon that subject?

A. The first conversation I remember to have had, I came into the room where they were, & Mr. Fuller said to me that he and Mr. Hayes were going into the dry-goods business somewhere in Kansas, I don't remember the place, but I think it was at Ottawa, hearing the name mentioned since I came here, & he asked me if I would not like to go in with him, & asked me if I did not have some lands in Arkansas that were not worth a damn. I think that was his language that he used at the time. I told him I had, & if those lands could be used by trading them direct for goods that I would be willing to do so, but that I did not want to put up these matters as collateral—assume liabilities & put up these lands as collateral for the purchase of these goods. That was about the substance of the first conversation I had, part of it is his language, what he said about the lands in Arkansas.

Q. It was Fuller that spoke?

A. Yes, sir.

599 Q. Repeat what he said again.

A. He, I think, called me by my given name, & says, Waddy, Hayes & I are going into the dry-goods business, in Kansas; hav'nt

you got some land in Arkansas that is not worth a damn? If you have, you can use them in buying goods here. & he mentioned at the time that dry-goods men were very anxious to sell & take almost any sort of collateral. To which I replied, as I have stated, that I did not want to create liability & use the lands as collateral, but that if I could trade the lands direct I would be very glad to do it.

Q. State what sort of property he had put in there. Did he say anything on that subject?

A. Well, he said he was using some property; I do not recollect now, except some steamboat stock I think he mentioned, in Tennessee. The reason I remember that is on account of its being in the State where I lived. I do not know whether he mentioned Nashville or Memphis.

Q. What did he say he did with it?

A. I do not recollect.

(Pl'ff's counsel objected as leading.)

Q. In what connection did he mention it?

600 A. He mentioned as using it, I think, as collateral in the purchase of those goods, either trading it direct or as collateral. I have got the impression, if I may be allowed to state it, that he was using it as collateral.

Q. Did he say how much?

A. No, sir; or if he did, I do not remember.

Q. Did he give the stock any title?

A. If he did, I do not remember that.

(Pl't'ff's counsel objected to the question as leading.)

Q. Did you have any farther conversation with them, or either of them?

A. Yes, sir; we had a great deal of conversation while I was there about other business matters, too.

Q. This Stettauer settlement, did he say anything on that subject further than you have stated?

A. I do not know. I don't remember that he did, positively, except that he said he was making a settlement with this house in reference to some Indian contracts, or something of that kind. I do not recollect the language now, just what he did say, but from the conversation I had, he was using whatever might be due, & expected to use it

601 in the purchase of those goods, this steamboat stock & some other things he mentioned that I do not recollect now just what they were. He mentioned along with the steamboat stock the balance that might be due from this house, which he said was very heavy. The house in New York would be paid as soon as the settlement was consummated.

Q. Did you have any other conversation with them?

A. Yes, sir; I had a good deal of conversation with Mr. Hayes, or had some conversation with Mr. Hayes, & some with Mr. Fuller separately. I talked with Mr. Hayes when Mr. Fuller was not present, & with Mr. Fuller a great deal when Mr. Hayes was not present.

Q. State what Mr. Hayes said, if you remember?

A. I remember asking him about Mr. Fuller's condition and ability to pay what he was owing, & Mr. Hayes told me at the time that Mr. Fuller was in trouble, & that if he was let alone he would be able to pay very soon, & advised me, and really insisted on my not crediting him. Part of what was coming to me there was coming indirectly, & I told him it was where I perhaps could not control it, & I would be

602 very glad if he would pay it; part was coming to me direct; part I had used as collateral on my banker in New Orleans. & he told

me that out of this business he thought he would be soon able to pay everything he owed—out of this Kansas dry-goods business, that Mr. Fuller would be able to pay. I cannot say that was his exact language, but that was the substance of it. It was a conversation had with Mr. Hayes when Mr. Fuller was not present.

Q. Did you have any further conversation with Mr. Fuller or Hayes either?

A. Yes, sir; I had a great deal of conversation with Mr. Fuller.

Q. How much were you with him & how long did you stay there?

A. Well, I was a week or 10 days, perhaps two weeks. I don't remember just how long, but I was there for some time, until he left & went over to Washington. After he went to Washington I got a dispatch from Mr. Fuller, & I went there. He came into my room after I got there. I went out generally in the morning after breakfast, & I returned at dinner time, sometimes at one o'clock, sometimes later & sometimes earlier. I was then in the room from that time until
603 evening. When these other gentlemen would go away, Mr. Fuller and myself would go out into town & talk about his business or his New Orleans troubles, that he contemplated all the time. That was the subject of the conversation.

Q. What did he say about it?

(Objected to as being vague.)

Q. Did he say anything about his troubles in connection with his business?

A. Mr. Fuller told me then there was a warrant out for Mr. De Wolf, one of his deputies, & he contemplated trouble as coming from New Orleans, & that he wanted to be prepared for it, & *be prepared for it*, & that he was urging this settlement as fast as he could, so as to get his means under his or his friends' control, (I am giving you what Mr. Fuller said to me at the time,) & that was the reason why he was urging a settlement as fast as he could with this New York house, mentioning at the time their name, which you have just now reminded me of. & he also said, in connection with those goods, that Kansas was a new country, a live country, & a good country to do business in; that Hayes was a good business man, & he & Hayes had made a great deal
604 of money there together; it was a fine place to trade. I believe that is about the substance of the conversation we had. That same thing was perhaps mentioned over in the same substance several different times.

Q. Did he state what had become of De Wolff?

A. No, sir. De Wolff was in New York at the time, but he told me that a warrant had been issued for him in Washington, & he was going over to Canada—De Wolff was. He was deputy in New Orleans under Perry Fuller while he was collector there.

Q. Do you remember any other conversation that you had with Mr. Fuller in reference to his business matters there, or the subetance of it?

A. I do not believe I do now, sir.

Q. Do you recollect any other conversation with Mr. Hayes there?

A. I do not think I do, except Mr. Hayes' answer to my questions as to Fuller's being able to pay after awhile, & so forth.

Q. Did you see Mr. Fuller again after that?

A. Yes, sir.

Q. Where did you first see him after he left New York?

605 A. I next saw him here at St. Louis, at the Southern Hotel.

Q. When was that?

A. That was some time during the fall, perhaps the latter part of

August or September, perhaps as late as October; I cannot fix the date. Some time after I had met him in New York, & had been to Memphis & came here.

Q. Do you know when the goods were seized here?

A. No, sir; except what I saw in the newspapers and heard about it.

Q. Well, in reference to that period of time, when was it you saw Mr. Fuller here?

A. It was very soon afterwards.

Q. How long after?

A. I could not fix any specific number of dates, or any specific time. I should think within a week, perhaps, after they were seized, probably less time than that.

Q. Did you see Mr. Hayes here?

A. Yes, sir.

Q. Who came first, do you remember—Hayes or Fuller?

A. I think I met Mr. Fuller first at the hotel; that is my impression.

606

607 Q. Do you know Edward Fuller?

A. Yes, sir.

Q. Did you see him here?

A. Yes, sir; he was here too, & Fant was here also from New Orleans, & several other gentlemen; a gentleman named Clarke, from New Orleans was here also.

Q. Do you know Mrs Fuller?

A. I met her while we were at the Southern Hotel; I never knew her before.

Q. Was she here at that time?

A. Yes, sir.

Q. Did you have any conversation with Hayes & Fuller then, or either of them?

A. Yes, sir; I had.

Q. State to the jury what that was.

A. Mr. Fuller told me that Hayes' goods had been seized here, attached here, & they contemplated trouble about it, & they wanted to make a bond, & asked me if I would help them to make a bond, which I declined to do, & gave them as a reason that I was not within the jurisdiction of this court. He then asked me to go on the bond as a guarantee to others, to state what property I had, & he thought that would be an inducement to others who would be taken here as bondsmen, which I declined to do.

Q. Did Mr. Hayes speak to you about it?

A. Yes, sir; he did.

Q. What did he say?

608 A. He asked me if I could assist him in making a bond here, by going on the bond myself.

Q. Assist whom?

A. Assist him & Fuller, by going on the bond myself; & asked me if I had not acquaintances here that I could get to go on the bond.

Q. Do you know whether Fuller made any other exertions to get a bond?

A. If he did I do not remember it; he left here a day or two after that under peculiar circumstances, & I learned that he had succeeded in getting the goods released, either by giving a bond or getting the goods released, or some other way. This I learned from Mr. Fuller.

Q. Did you have any conversation with Mr. Fuller in regard to the disposal of this property after or before that time?

A. Yes, sir; Mr. Fuller came to my office in New Orleans, after the 4th of March, after he had gone out as collector, & asked me if I would become the custodian with his son, Edward Fuller, of his effects; stating that he owed some good many debts up the country, & contemplated a good deal of trouble with the Government. To which I replied that I would be glad to become the custodian of what money he had; that I would see further about it; & in the first conversation, I told him that so far as having anything to do with any frauds was concerned, I would prefer not to have anything to do with it.

By a JUROR. Repeat that again, please.

A. Mr. Fuller asked me if I would be the custodian with his son, Edward Fuller, of his property & his effects, until he got rid of these
609 troubles he was expecting from debts & from the Government, both; & my reply to him was that I would be glad to become the custodian for what money he owed me first, but in further conversation with him, I stated to him that I would decline to have anything to do with covering up his property, or assisting him to carry out anything that was a fraud. I gave my reasons at the time, business, & so forth.

Q. Did you have any further conversation with them on the subject of their property & those goods?

A. I do not remember now having any further, sir.

Q. Do you know anything else in connection, with those goods, in any way?

A. I do not remember now, sir, that I did; if you call my attention to some particular point, I may remember something more, but I do not remember just now.

Cross-examined by Mr. Broadhead, counsel for the plaintiff:

Q. When was this last conversation you spoke of with Fuller?

A. *He* was soon after he went out of the collector's office; I do not remember the date.

Q. Hadn't he left New Orleans at that time?

A. I don't think he had been away at that time.

Q. What were you doing at New Orleans at that time?

A. I was in the cotton business; that was my principal business, commission merchant, trading in cotton.

Q. Were you residing in New Orleans at the time?

610 A. My principal business was there, but my family was at Memphis.

Q. Where is your principal business now?

A. At Memphis.

Q. And was at that time?

A. No, sir. My business at that time as a merchant was at New Orleans, & I staid there myself, most of the time.

Q. Did you have a commission house at New Orleans?

A. Yes, sir; & a branch at Memphis, also.

Q. Who was with you in business in New Orleans?

A. Mr. Morriss was my partner, but I think we were alone at that time; we dissolved.

Q. Were you interested in the warehouse of Isaac Woods at New Orleans?

A. No, sir.

Q. Do you know Isaac Woods?

A. Yes, sir.

Q. Did you have any conversation with him?
A. Yes, sir.
Q. Did you get any imported goods through his bonded warehouse?
A. I did not import them; I sent them from New York.
Q. You had them shipped there?
A. Yes, sir.
Q. Where to?
A. Part of them to St. Louis; I believe nearly all were shipped to St. Louis.
Q. Shipped on a transportation bond were'nt they?
A. Part of them, & part of them were duty paid in New Orleans.
Q. The goods were seized?
611 A. I heard so.
Q. And you were indicted?
A. Yes, sir.
Q. And the rest of you?
A. Yes, sir.
Q. On account of that transaction?
A. Yes, sir.
Q. The goods were shipped to New Orleans that you had taken out of the custom-house?
A. No, sir; I do not know where they were shipped to; all the goods were bought in New York from D. J. & G. S. Ely, importers, there.
Q. And shipped to New Orleans under transportation bond?
A. Yes, sir.
Q. And deposited in Isaac Wood's warehouse?
A. Part of them was deposited in Isaac Wood's warehouse.
Q. And fraudulently removed from that warehouse?
A. So far as I was concerned they were not. I understood that they were though; that the duties I had paid on them, & the money I had deposited with Mr. Gray, De Wolf, & Fuller was not paid into the Government, that is, Government did not get the benefit of it.
Q. What time were they shipped from New Orleans to St. Louis?
A. During the winter of 1868; I could not give you any of the dates now, sir.
Q. Was it not after Mr. Fuller's term of office was out?
A. No, sir; it was while he was in office.
Q. You say you paid the duties on them?
612 A. I did.
Q. How came you to pay the duties when they were shipped under transportation bond?
A. We paid the money; deposited the money with Fuller, Gray & De Wolf two or three different times, sufficient to meet the duties which was $8 a bag in gold.
Q. You had given a bond to transport those goods to St. Louis?
A. No, sir; I had not except those that were actually transported to St. Louis.
Q. Didn't you give a bond for a portion of those goods received?
A. Not a transportation bond.
Q. Did you give any transportation bond there at all?
A. No, sir.
Q. Didn't you know that those goods were seized that were shipped here?
A. I knew from hearing Mr. Lewis & the gentlemen that handled them say so.
Q. Was not the bond cancelled at New Orleans?

A. I do not know, sir; I understood so.

Q. You had been importing goods before this lot was imported previous to that time; hadn't you imported goods previous to the time the goods were shipped under transportation bond to St. Louis?

A. I never imported any goods at all; the goods I had anything to do with were bought in New York, imported by importers there.

Q. You had given a transportation bond to transport your goods to St. Louis, & you paid the duties at New Orleans?

A. No, sir; not on them. Mr. Lewis, Nanson & Co. paid the
613 duties on those that were shipped here in bond; they were consigned to them, & they charged me with the amount of the duties in rendering the account of sales; they were shipped here for sale, & they sold them.

Q. You let them have them?

A. Yes, sir.

Q. What are those goods that were shipped in transportation bond?

A. The goods that Lewis, Nanson & Co. got, part of them were, as I stated before.

Q. And you paid the duties in New Orleans?

A. No, sir; not on those goods; on the goods that were shipped here in transportation the duty was paid, but the goods that were shipped here without any transportation bond, the duty was paid in New Orleans.

Q. You do not know anything about the cancellation of a bond in the collector's office?

A. No, sir; only what I heard from Government officers, & Mr. Kinsella. I heard them say that they had been fraudulently cancelled, & those shipments were fraudulently made to Brownsville & other places.

Q. Did I understand you to say in your examination-in-chief that Fuller told you in New York he was going to put into this Kansas business any money he would get out of Stettauer & Co.?

A. Well, sir, I don't know what you understood me to say, but I said this, that I got the impression from the others, then, that that was what he was going to do with that money & the steamboat stock both, but I could not give you the conversation.

614 Q. You are certain on that point?

A. No, sir, I am not certain that he said anything in reference to what he was going to do with anything except the steamboat stock.

Q. You say at New York you had a conversation with him in reference to the debts at New Orleans?

A. Yes, sir; we had a good deal of conversation about it in New York.

Q. Where he told you about De Wolff?

A. Yes, sir, that was in New York.

Q. You have given your deposition in this case?

A. Yes, sir.

Q. Did you say anything about that in your deposition?

A. I do not remember whether I did or not; perhaps I did not mention De Wolff. I do not know.

Q. You did not say anything in your deposition either about this conversation you had with Perry Fuller about putting his property out of hands in New Orleans?

A. I think I did, sir.

Q. What was said, & where was it in New Orleans?

A. Mr. Fuller called at my office & told me he was contemplating difficulty with the Government, & that he owed a good many debts up

the country, & was going to have trouble about it, & asked me if I would the custodian with his son, Edward Fuller, of his effects until he got through his difficulties. That is the substance of what Mr. Fuller said to me.

615 Q. Had there been any seizure of goods, at that time—of imported goods in New Orleans?

A. I think there had. I think the goods had been seized at New Orleans.

Q. Did Mr. Fuller know you were implicated in that seizure in any way whatever.

A. He knew I had been handling them. If there had been any fraudulent doings I did not know anything about it.

Q. You know it was charged against you?

A. I know the goods had been seized here; but part of them had been released, & they were seized again; but the last seizure had not been made at the time. That is my recollection.

Q. Didn't you know then, and don't you know now, that the charge of fraudulent importation of those goods had been made against you & De Wolff at the time of that conversation or since?

A. I knew it since, when I was arrested. I was arrested here; but at the time this conversation was had I had no intimation. On the contrary, I was told when I went to see Fuller. Kinsella sent to come to the custom-house, & he stated to me from the way the records looked there I had something to do with the coffee ring, & the best thing I could do was to make a proposition to him which would be submitted to the Secretary of the Treasury. I went to see Mr. Fuller right at once, & asked him what the trouble was, & he replied that it would not amount to anything, & not to talk to Kinsella or mind him; that he would go to Washington & take Kinsella's head off at once if he did anything.

616 Q. This conversation you speak of was before Perry Fuller had the conversation on the 4th of March in regard to transferring his property?

A. No, sir. The conversation about his property was before this last conversation that I had with him after seeing Mr. Kinsella. At the time Mr. Fuller had this conversation about his property there had been no second seizure of the goods here, & no trouble then that I knew of contemplated, except from the Government in Washington; but it was talked of through the newspapers; there had been a good deal spoken about it; but all the conversation I had with Mr. Fuller was to the effect that there was nothing in Kinsella's examination; that the thing had been all fixed up right in New Orleans.

Q. Well, those goods came from Mr. Wood's warehouse?

A. Part of them did.

Q. Didn't you get some of those goods out of the warehouse before any bond was given & before any duties were paid?

A. No, sir; I did not. I went & deposited at one time $4,200 with Mr. De Wolff, & I have his affidavit with me in my valise to that effect, that the money was deposited with him to secure payment of whatever debts might be ascertained to be due, which was to be done in the regular way, & got an order from him to Wood's warehouse to take 500 bags of coffee, estimating the duties at $8 a bag; sometimes it was a little more & sometimes a little less. At another time I deposited $500 with Mr. Gray & got an order to ship 562 bags of coffee.

617 I am informed by Mr. Kinsella that bond was given in New Orleans by Isaac Woods to transport those goods to Brownsville,

Texas, & other places when they actually had come to St. Louis duty paid.

Q. Had you any connection with those goods?

A. I handled those goods for Isaac Woods.

Q. Were you his agent?

A. Well, he deposited collateral with me at one time. I do not remember the amount; some $5,000 or $6,000 in gold as a margin. Part of them were handled on my own account & part for Mr. Woods.

Q. Did Mr. Woods pay you any part of the profits?

A. No, sir; he agreed to pay me 2½ per cent. commission for handling them.

Q. You paid money into the custom-house to one of the deputies?

A. Yes, sir; at one time I deposited money with Mr. Fuller himself. I will explain this: It was very difficult to get a firm to ship in the regular way in a credit business. In this way we could ship the goods this evening & perhaps get the papers up there in the regular way in two or three, or four or five days. It was very often done whenever time would permit of it. Whatever bonds or papers were signed by me; whatever appears in my name in New Orleans were signed invariably in blank, presented by the custom-house broker there, Mr. Voxley. I do not know that I ever signed a paper of any sort that was filled up.

Q. You signed transportation bonds in blank?

618 A. Invariably. The reason for that was to get at the amount—the actual amount of duty—& then it was filled up afterwards what was actually due on the goods after they were ready to be shipped.

Q. When you deposited this money with De Wolff to pay the duties on imported goods, did you ever give a transportation bond afterwards?

A. No, sir; I never did.

Re-examined by Mr. Henderson, def'ts counsel:

Q. I understand you to say you paid the duties on all goods that were owned by you.

A. Every dollar, except it was in transportation upon which the duty was to be paid here.

Q. Well, did you settle that through the persons to whom they were shipped here?

A. Yes, sir; it was charged up in the regular account of sales by Lewis, Nanson & Co., & charged up in the regular account of sales, duty on so many bags of coffee, so much in gold.

Q. Is that the usual way?

A. Certainly; that is the only way I ever knew of.

Q. What has become of the arrest & indictment you speak of?

A. Well, sir, I took the affidavit of Mr. De Wolff & Mr. Gray to Washington to show to Mr. Banfield, who is assistant solicitor of the Treasury. I was referred to him by Mr. Boutwell. I saw Mr. Boutwell first, & he agreed with me that I should have no further trouble about it; that as soon as Kinsella came to Washington, I think, was

619 his remark, he would look a little farther into it, & then would direct both the indictments to be dismissed; but at the same time he commenced writing a letter to the district attorney in New Orleans, directing him, which he said he would do, (I did not see the letter,) to give me no further trouble, & told me if I went to New Orleans I should have no further trouble about it. I have been in constant communication with my attorney, Mr. Hunt, in New Orleans, since the indictment, & the district attorney there has had an agreement that whenever they wanted me for a trial I was to go there & be there. I

gave bond to be there; but I did not appear because my attorney wrote me that there was an agreement to pass it over in that way.

Q. Then do you say to this jury that you have committed no frauds upon the Government?

A. None whatever, sir, at all.

By Mr. BROADHEAD. Where did you get this De Wolff affidavit?

A. At Toronto, Canada, The Queen's Hotel.

Q. Where did you get Mr. Gray's?

A. At the same place. I found them at the hotel; but we went to a lawyer's office & had them drawn, & they were fixed up in the United States consul's office.

By a JUROR. Is Perry Fuller in your debt now?

A. Yes, sir; he is.

By Mr. BROADHEAD. On what account?

A. On account of money given him while in New Orleans—cash.

620 Q. Didn't he loan you money at New Orleans?

A. He did at one time; but it was paid back.

621 FRIDAY MORNING, *Oct. 6th*, 1871.

Mr. Henderson read the deposition of J. W. Dunn, one of Indian agents:

Deposition of James W. Dunn, taken before James M. Pratt, notary public within and for the county of Cass, State of Indiana, at the city of Logansport, on the 22d day of September, 1871, on the part of the defendants.

Deposition of James W. Dunn.

JAMES W. DUNN, being first duly sworn to testify the truth, deposes and says:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is J. W. Dunn; aged 63 years; Logansport, Indiana; farmer.

Ques. 2. State whether you are acquainted with the parties to this suit.

Ans. I am acquainted with Hayes, but none of the others.

Ques. 3. In what employment were you in 1865–'66?

Ans. I was agent for the Creek Indians, stationed at the Creek agency, Indian territory.

Ques. 4. What, if any, employment did you furnish William Hayes during that time, and how much did you pay him for it, if anything?

Ans. 5. During that time he did considerable correspondence

622 and writing forms, for which I paid him, at different times, in all not to exceed five or six hundred; I am not positive as to the amount, but that would cover it—this is to the best of my recollection.

Ques. 5. What, if any, other money did you ever give him?

Ans. None; I never paid him any other money.

Ques. What, if any, employment did you ever furnish the plaintiff William Hayes, at Ottawa, Kansas, during those two years?

Ans. None at all. I never saw him there; I never was there on any business of any kind.

Ques. State what, if any, acquaintance you had with Isaac Coleman, during those two years, and what he was doing.

Ans. I became acquainted with Isaac Coleman at Lawrence, Kansas.

We went down into the Indian country together in 1865. He was agent for the Choctaw and Chickasaw Indians.

Ques. What, if anything, do you know of his present whereabouts?

Ans. I have information that he is dead. I read the notice of his death in the newspapers, and have been so informed by parties
623 with whom I have conversed. I am entirely satisfied that he is dead. He died, perhaps, in 1867.

JAMES W. DUNN.

Also the deposition of G. C. Snow.

Deposition of G. C. Snow, taken at Lawrence, in the State of Kansas, on the first day of August, 1871, before G. M. Holton, a notary public within and for the county of Douglas, in said State, on behalf of the defendant.

Deposition of G. C. Snow.

G. C. SNOW, of lawful age, being first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposeth and saith:

I reside in Baldwin City, Kansas, and am 51 years of age; have resided at Baldwin City 8 years, the sixth of August. I was Indian agent from the 31 of July, 1862, to the 30 of September, 1869. I knew Mr. Hayes, the plaintiff in this case; have known him since the middle of June, 1865. My name is George C. Snow. I paid Hayes something in 1865 & 1866 for assisting me in making up my accounts. I paid him between $150 and $300; don't recollect of ever paying him any other money for services. I don't think the account I paid Hayes would
624 fall short of $150, and I am sure it would not exceed $300. I have no recollections of ever having any other dealings with Hayes.

G. C. SNOW.

Also the deposition of Mr. Helen—the conversation with Mr Fuller, alone, which was excluded, and is now allowed by the court to be offered. (Mr. Helen's deposition copied on page 361 of this transcript.)

Also the affidavit referred to by Mr. Hayes in the suit against P. Fuller, in New York:

Affidavit W'm Hayes ag'st Perry Fuller, Alex. McDonald, & Fred. A. De Wolf.

N. Y. supreme court, city & county of New York.

WILLIAM HAYES
ag'st
PERRY FULLER, ALEXANDER MCDONALD, & Frederick A. De Wolf.

CITY & COUNTY OF NEW YORK, *ss:*

William Hayes, of Fairport, in the State of New York, being duly sworn, says he is the plaintiff in the above-entitled action; that this action is brought to recover the sum of twenty-three thousand dollars, being the balance due deponent for money loaned and deposited

625 with the defendants, who were copartners in business in the city of New York, during the year 1868, doing business under the firm name and style of Perry Fuller & Co.; that said sum was so loaned and deposited by deponent with the defendants, in the month of June, 1868; that there is now actually due and owing this deponent from defendants, for money so loaned to and deposited with the defendants as aforesaid, the sum of twenty-three thousand dollars over and above all payments, and over and above any and all claims the defendants may have against the plaintiff.

Deponent further says that said firm of Perry Fuller & Co., composed of the defendants as aforesaid, have now no office or place of business in the State of New York, and that each and every one of the members of said firm are non-residents of the State of New York.

Deponent further says that the defendant Perry Fuller has property consisting of the following bonds or stocks, namely:

100 shares of the capital stock of the First National Bank of Fort Smith, Arkansas.

108 shares of the capital stock of the Brooklyn Fiber Co., certificates Nos. 36, 37, 39, & 38.

626 2 promissory notes of A. E. McKee & Co.

100 shares of the capital stock of the Merchants' National Bank of Little Rock, Arkansas, or the proceeds from the sale thereof, to wit, about $11,000, now in the hands & possession of one Lewis Stettauer, in the city of New York; and that, as he is informed & believes true, the said Perry Fuller is about to remove said property from the State of New York. And further deponent saith not.

WILLIAM HAYES.

Sworn before me this 17th day of July, 1869.

JNO. W. NELSON,
Notary Public, N. Y. C.

Defence closed.

627 PLAINTIFF'S EVIDENCE IN REBUTTAL.

Plaintiff offered in rebuttal the following evidence:

Mr. Brodhead read the deposition of Perry Fuller, taken October 27th, 1870.

Mr. Henderson admitted that Perry Fuller was dead.

Deposition of Perry Fuller.

The deposition of Perry Fuller, taken at Ottawa, Kansas, before A. Franklin, a notary public within and for the County of Franklyn, in said State, on the twenty-seventh day of October, 1870.

PERRY FULLER, being first carefully examined and cautioned, and sworn to testify the whole truth, deposeth and saith:

I am forty-five years old next March, and now living in the Cherokee Nation. Yes, I knew W'm Hayes, plaintiff in this action. No, I have never had any agreement or understanding with W'm Hayes, whereby I was to receive any profits from any business with him. I never had any conversation with any person in which I stated I had any such agreement. I was in New York City in August, 1869. I was there part of the time from June to September, backwards and forwards,
628 during that time. I was settling up my old business with C. S.

Stettaur & Co. Mr. Hayes was present during that settlement in the capacity of clerk, having been an assistant book-keeper of the firm of Perry Fuller & Co. He assisted me in examining the books and making up a statement. That settlement was effected. After that settlement, I think Mr. Hayes told me he intended buying a stock of goods, and going out to Kansas. Had no conversation with him as to where he was going, or what he was going to do at that time. I was present in New York City while he was making his purchases. After the first conversation, Hayes told me he was going into business in Ottawa, Kansas. I had no understanding or agreement with Mr. Hayes, whereby I was to receive any of the profits accruing from such business, nor was I to have any interest in the business. I know Clifton Helen, of Washington. I had no conversation with him during the summer of 1869, wherein I stated I was buying goods, nor promised him a suit of clothes.

Ques. During or about the month of August, 1869, were you
629 present at the office of Buckley, Sheldon & Co., when Mr. Helen came in and presented a check for one hundred dollars, which you had given him?

Ans. I was.

Ques. Did you have any conversation in his presence, with Mr. Butts, Mr. Buckley, or Mr. Hayes relative to the insurance on Mr. Hayes's goods, in which you instructed Mr. Hayes to cancel the insurance, as it was a d——d sight higher rate than you had ever paid?

Ans. No, sir; I never made any such statement. Mr. Hayes asked me what I was in the habit of paying when I was shipping goods up the Missouri River. I said ¾ to one per cent. Hayes said he was paying 2½ per cent. I stated in the presence of Mr. Helen that it was an outrage.

Ques. Do you know John F. Coyle?

Ans. Yes, sir.

Ques. How long have you known Mr. Coyle?

Ans. I have known him five years.

Ques. During the summer of 1869, did you have any conversation with him, in which you stated you were purchasing a stock of goods for Kansas?

Ans. I had not. I am not indebted now, nor was I then, to Mr. Coyle, in any sum of money. I never was indebted to him.

630 Ques. Did you ever have any conversation with Mr. Coyle, in which you promised to pay Mr. Coyle any sum of money realized out of any goods taken to Kansas?

Ans. I never did.

Ques. Was Mr. Coyle ever in your room at the St. Nicholas Hotel?

Ans. Yes, sir; he was there frequently.

Ques. Did you ever have a conversation in your room there with Mr. Hayes, in which Mr. Coyle was present, in which you used these words: "D——d if I ever paid such amount, and I never will?"

Ans. I don't know anything about such a conversation.

Ques. Did you ever have any conversation with Mr. Coyle, in which you stated that you had put the securities realized from the Stettaur settlement into a stock of goods to go to Kansas with?

Ans. I did not, sir.

Ques. Did you meet Mr. Coyle in Washington in January, 1870?

Ans. I met him frequently during the winter of 1870. About the middle of January, 1870, I think, he first called on me.

Ques. Please state what occurred during that call?

631 Ans. He called to borrow some money. That is all the business he made known.

Ques. Did you ever have a conversation with him, in which you stated that all your misfortunes occurred by reason of the seizure of your goods in St. Louis, by Huntington?

Ans. No, sir.

Ques. Did you write to Mr. Coyle from Ottawa, Kansas, during the month of October, 1869?

Ans. I do not recollect that I ever wrote a letter to him while in Kansas.

Ques. Did you ever tell Mr. Coyle that you apprehended a seizure of your property by the Government, and that you intended placing it in the hands of some friend?

Ans. No, sir.

Ques. What was Mr. Coyle's occupation there during the winter of 1870?

Ans. It was that of a loafer; he had no visible means of support; he was a lobbyist; he was borrowing money of his friends, and living from hand to mouth.

Ques. Are you acquainted with Hamilton G. Fant, of Washington?

Ans. I am.

Ques. During the summer of 1869, did you ever tell him that you feared the Government of the U. S. would attach the money you
632 were claiming from Stettaur, and that you had got Hayes to place an attachment upon it to avoid that, and prevent every other creditor from interfering?

Ans. No, sir.

Question. During the spring of 1870, did you make a proposition to Mr. Fant to settle Mr. Hayes' suit, by assigning your interest in a claim against the Government, and some property in Tennessee to Mr. Huntington?

Answer. No, sir, I did not, in that shape.

Question. Did you make any proposition personally?

Answer. I did no business, except through my attorney, Mr. Voorhies.

Question. Do you know James A. Whalen, of New York City?

Answer. I have seen him once—do not know him—I was introduced to him by some one in New York.

Question. Do you recollect his executing a certain bond, given to release an attachment on the property in Stettauer's hands?

Answer. I recollect that, but did not know it was the same man. I now recollect his name was Whalen.

Question. Did you request him to execute that bond?

Answer, I did not; it was his own offer.

Question. Are you acquainted with Louis Stettauer?

Answer. I am.

633 Question. Do you recollect placing any property in his hands; if so, what property and for what purpose?

Answer. I placed some property in his hands—bonds and stocks—in September, 1868, and a house on 33d street, between 8 and 9 avenue N. York. All my bonds and stocks were placed in his hands and the house was turned over by my son to him. He was at that time Mrs. Fuller's trustee. I was partner with his brother Charles. They were left with him for safe-keeping. A portion of this property was Mrs. Fuller's and part was mine.

Cross-examination:

Question. Where in the Indian Nation do you reside?

Ans. Four miles south of Chetopa.

Question. How long have you resided there?

Answer. Since the 24 or 25 of July, 1870; my family (wife & son) are with me.

Question. Where did you reside before going there?

Ans. At Washington. Have made Washington my headquarters since November, 1865—lived there since June 1869; prior to that time in New Orleans, about 7 months; prior to going there I was in Washington—was there about one year; and before living in Washington
634 I was in New York City—went there in the fall and left in the summer—was there 7 or 8 months. Before that my residence was in Kansas; my home was in Kansas about 11 years, from '54 to '65. In Kansas I lived at Sac & Fox agency, in Centropolis, and at Lawrence. At Lawrence in the summer 1865; at Centropolis from 1854 to 1858, about four years; the rest of the time at Sac & Fox agency. I was a merchant at Centropolis, selling general merchandize, kept Indian goods—was not a licensed trader. Centropolis was outside the reservation. I mean I was not a licensed trader on the reservation. My business at Lawrence was merchandizing—general trade—kept Indian goods; trade was both wholesale and retail; was in company with Alexander McDonald, and William Sells was also a partner; firm name was Perry Fuller & Co. Mr. Sells was a member of the firm of Perry Fuller & Co. from April, 1865, for about one year, I think. We had business branches at Fort Gibson and the Creek Agency. The stores at Fort Gibson and the Creek Agency were licensed stores within the reservation. We did
635 business to the amount of about $750,000 during that year. It was a fair paying business. Was not so very successful. I call 20 per cent. profit a fair paying business; would not nett more than 12 or 14 per cent. after paying expenses. We did not make anything, as the trains we sent to Utah were destroyed, and this was in 1865. After Sells went out, the firm was composed of McDonald and myself under same firm name. We still did business in Lawrence in John Speir's building. I continued in business under same firm name with McDonald as partner, in Lawrence, until the fall of 1866; character of business was general merchandizing. After that it was general commission business in New York, where Mr. F. A. DeWolf was added to the firm. He was our book-keeper before this. The name of firm continued the same till 1868; business was selling cotton mostly; that firm closed business in Oct. 1868. I was contracting with the Government during all this time but was not interested in any business, outside
636 of the business of the firm. Our firm took contracts with the Government, supplying the Indians; commenced contracting at the time firm was first organized and closed our Indian business in 1866. The amount of our Indian contracts while Sells was a partner, was about $250,000, and after that it run up to about $500,000 or $600,000. While we were at Lawrence we did not speculate in lands, tho' McDonald and myself owned large tracts of land. Our lands were in Osage County, Kansas. We had about 40,000 acres there. We did not own any lands in Douglass. I owned some individually. Had a small piece of ground, 50 or 52 acres, where the fair ground is, near Lawrence. Had no other lands; owned no interest in West Lawrence. My wife had an interest there of eight acres, purchased of Col. L. W. Eldridge, obtained in a trade between Mr. Eldridge and myself. I sold him a house and two lots for the fair ground and eight acres and a note and mortgage given by Eldridge's wife. I made my wife a present of the eight-acre interest in West Lawrence. Transfer was only made a short time ago from Coats

637 to my wife. I never had the title; transaction with Eldridge was in October, 1865. I had two or three lots in Lawrence; I sold them, or Mr. De Wolf sold them for me. I sold the land in Osage County to Northrop and Chick; I made the sale. The consideration was $35,000; $10,000 of it was Kansas City real estate, the balance was money; this is paid. I sold the Kansas City real estate to my son, E. E. Fuller, in 1867; traded it for an interest he had in our business as book-keeper. He had been in our employ, and for his services I transferred this real estate to him. He was at that time about twenty years old; in his twentieth year. The $25,000 cash went into our business. Don't recollect whether I transferred any other property to my son at that time. I think I made him a present of the land near Lawrence, 62 acres, when he came to Kansas. I think I gave him a deed for it; gave him no other land in the West; gave him notes for collection on my account. He accounted to me for the proceeds; gave him or sent him a power of attorney, and he did business under that
638 power; the power was to collect and settle debts and to transfer real estate. He accounted to me for the proceeds of the debts collected under the power. The notes and mortgages taken on the transfer of the Lawrence property I sold to Mr. Coffin. The books of Perry Fuller & Co. are in Washington, D. C., in the house we have rented at No. 12 North B street, in care of a servant; present numbering of the streets.

Question. Have you any objections to the def'ts in this action examining or inspecting those books?

Ans. I have objections.

Question. What is the nature of those objections.

Ans. It is the private matter of the firm, and my own private matters, and don't concern this case. This is my conclusion, that it does not concern this case.

Ques. Are the accounts in those books that were kept between Perry Fuller & Co. and Mr. Hayes?

Ans. Yes, sir. My individual firm account was also kept there; that is, the accounts between the members of the firm. The accounts of the employees of the firm were also in these books. Mr. Hayes was assistant book-keeper in our firm, I think in 1867 and part of 1868, and some in 1869, from middle of July to the 25th of August. This was in New
639 York City; I employed him there. Middle of July is as near as I can state the time of the commencement of the service in 1869. Can't state the date of the conclusion of this service without seeing my books; the books of Perry Fuller & Co., I mean. They would show the settlement with Stettauers. The date of the settlement with Stettauers was the time when he left my employ. I am not in any business at the present time; have not been engaged in any during the past summer; have been in the Cherokee country. Never was in New Mexico, at Maxwell's, nor in Colorado. Own no property in the mountains. Mrs. Fuller is not carrying on any business; no business is being conducted or carried on in her name, so far as I know. She has no interest in any business in which her name is not known, so far as I know. My family consists of myself, my wife, and little son—I mean my family at Chetopa. I have colored servants—none other; Mrs. Cora Carr lived with us nearly three years; she is now in Washington. The house in Washington is in her charge while she is there. I kept my bank account at Lawrence with W. H. R. Lykins. Mr. Hayes' account is contained in the books of Perry Fuller & Co.

640 Question. Have you any objection to allowing the def'ts to ex-

amine and inspect Mr. Hayes' accounts in those books of P. Fuller & Co.?

Ans. I have objections.

Ques. What is the objection?

Ans. My books I consider as private matters. I went to St. Louis after the attachment was levied—was not telegraphed to come there as I recollect. Don't recollect whether I was telegraphed that the goods were attached. I was in Washington when I heard the fact. I think I saw it in the morning paper, the Chronicle; don't remember the day of the week or month; must have been near the first of September, as I was in St. Louis on the 3d, I think. I did not leave Washington for two or three days after I heard of it. Saw Hayes in St. Louis when I got there; I first saw him at the Southern Hotel; I stopped there, and think he did; did not know he was stopping there until I got to the hotel; I have always stopped there when in St. Louis since the hotel was opened. Was not there when the goods were released. I had some conversation with Mr. Hayes in relation to the release of the goods; I think I applied to some one to become
641 his surety for the goods. I think it was Capt. Dan Able and Capt. Warner, of the Southern Hotel. I might have applied to others, but I don't remember any other names. I was a friend of Mr. Hayes, and was trying to get him out of trouble. I do not know of Hayes applying to any one. I understand that he applied to Mr. Henry Smith and Mr. Proctor; they are merchants. I was not present when he applied. Mr. Nelson was at St. Louis during the negotiations for the discharge of the attached; we came part of the way together; we came together at Crestline, Ohio, and came from there to St. Louis together. We staid at St. Louis, at that time, about four days. Edward E. Fuller came there at that time, and staid a couple of days. I do not know of his applying to any one to become bail for the redelivery of the goods. I did not see the goods there. I did not see the sheriff while there. When I left St. Louis I left Hayes there. I went from thence to New Orleans. I next saw Hayes, in about three or four weeks afterwards, in Ottawa, Kansas. I staid in Ottawa, going backwards and for-
642 wards, for six weeks. I suppose Hayes opened his store while I was here. When I first came here from New Orleans I was backwards and forwards; cannot say how long I remained here at that time. I presume I was here a week when I first came here. I only stopped in Kansas City one day. As I came here I did not see the goods at Kansas City that were attached. I did not pay any attention to that seizure at Kansas City. I heard of it. I heard of it in St. Louis, on my return from New Orleans. I did not correspond with Hayes, in any way, in reference to this seizure at Kansas City. I understood Edward Fuller went down. I understood it from Edward E. Fuller's wife. I did not understand it from Hayes. I heard it from Edward Fuller when he came back. I met Hayes, very probably, when he came back in his store, or at the Ludington House. My recollection of it—Edward was away a number of days; my wife came here on a visit about that time; she remained here probably about three weeks; from here she went visiting her aunt at Newman, and her cousin at Wyandotte, both in this State; and, after finishing her visits in this western country, went
643 back to Washington. She never resided here; she stopped with Edward awhile.

Question. Has she any interest, either directly or indirectly, in this store or business of Mr. W'm Hayes in this place?

Answer. Not to my knowledge.

Question. Have you any reason to suppose she has such an interest?

Answer. No, sir.

Question. Has she, in any way, any lien upon the goods of Hayes?

Answer. No, sir.

Question. Has she ever had any lien?

Answer. No, sir.

Question. Has she ever had any interest in his business here?

Answer. No, sir; not to my knowledge.

Question. Has she ever had any interest in the profits of Hayes' store?

Answer. No, sir.

Question. Has Hayes, in any way, ever accounted to her for any profits in his business here?

Answer. No, sir. I have never examined Hayes' books since he has been in business here. I do not know that he has books. I have never seen any statement of his business since he has been here, nor
644 have I ever sent any one to examine his business, nor has any one ever reported to me any examination of his business here made in my interest, or otherwise. I have never directed Edward to look to the business that Hayes was doing. Edward has no power of attorney now to transact business for me here. The old firm of Perry Fuller & Co. is dissolved, but its business is not closed up. I am not at this time a member nor interested with any firm or company doing business anywhere. I am not doing business myself in the name of any other person, nor interested in any such business, neither directly or indirectly.

Ques. Have you any implied understanding with any one by which you have, or may have, any interest in any business whatever?

Ans. No, sir; I have not; am entirely out of business in every respect.

Ques. Has any such business been transacted during the past year, or since August, 1869, in which you were in any event to have an interest.

Ans. There was none. The firm of Perry Fuller & Co. dis-
645 solved in September, in 1868, by mutual consent; but the firm name has been used in settling business; since then I have no books of account at my home, nor any with me here. I have no bank-books here, nor any books out here. I have no paid checks with me. I keep stub-books of checks drawn, but they are with my other books in Washington. These stub-books show the amount drawn and to whom payable, or should if they have been kept correctly, and on what banks drawn. I have those books relating to my business in New York & Kansas. The stub-books would show the handwriting of the man who drew the checks. I have objections to the defendants, or any one in their behalf, examining those stub-books.

Ques. Have you any objection to the production by yourself, to defendants or to some person in their behalf, of such parts of them as show checks drawn in favor of W'm Hayes?

Ans. I have.

Ques. Do they show any checks drawn in favor of W'm Hayes?

Ans. I suppose so; don not know without looking.

646 Ques. Do they show checks drawn in favor of Edward E. Fuller?

Ans. Yes, sir.

Ques. Have you objections to showing such of them to defendants or

to some person in their behalf, as show checks drawn in favor of Edward Fuller?

Ans. I have objections to showing them to any one, they being my own private matters. The amount in controversy between me and Stettauer was about $17,000 in all. In that matter Mr. Hayes was assisting me. I sent for him to assist me because he had been assistant book-keeper, and understood the books better than I did. The matter appeared on the books of C. S. Stettauer & Co. & Perry Fuller & Co., account kept between the firms. The matter of difference was in the matters appearing in those accounts; our books and their books did not agree. The book-keepers who kept the accounts were Mr. De Wolf and Mr. Hayes, in which the accounts of Perry Fuller & Co. and C. S. Stettaur & Co. were kept; Mr. De Wolf was then in New York, part of the time only, on account of family sickness. There was a litigation between Perry Fuller & Co. & C. S. Stettaur & Co. in court, to
647 coerce the settlement. The litigation was commenced in the name of Perry Fuller & Co. & Mary Fuller; the attorneys in those suits were Doolittle, Davis, Lyon & Nelson for Perry Fuller & Co. and Mary Fuller; they were all discontinued by mutual agreement at time, as shown by agreement heretofore introduced as evidence in this cause. During the time, whilst he was there, he, Hayes, attached the papers and stocks I had in the safe for safekeeping. I do not know who paid the costs of that attachment; I did not, nor do I know who paid the attorney; I was not informed by any one, before the attachment was levied, that it was about to be levied. Mr. Stettaur first informed me—Mr. Lewis Stettaur; I now recollect that I was first served with the papers; no one was present at the service; I was in the public hall, at the St. Nicholas; I do not recollect whether I saw Mr. Hayes the day of service or not. He was spunky for two or three days, and I did not pay much attention to him. I do not know when nor how the attachment suit was settled; it was settled between the attorneys; my attorneys were
648 Doolittle's firm, but cannot recollect who Mr. Hayes' attorney' were; Mr. Nelson, of that firm, is my son-in-law.

Ques. At the time of the Hayes' attachment, was Mr. Nelson active in your business as one of your attorneys?

Ans. He was.

Ques. As a member of his firm, did he have charge of your business?

Ans. I did not understand it in that way; he was the active man in settling the business and attending to it; in fact he done it all himself. I didn't consult anybody but him after he took hold of it; I supposed he referred to Mr. Doolittle, but I have no personal knowledge of it. Mr. Nelson took the active part in settling the attachment suit of Mr. Hayes. The firm of Perry Fuller & Co. owes the First National Bank of Washington City $10,000, and Mr. Voorhees, as attorney for the firm, tried to settle it; I saw Mr. Coyle during the pending of that negotiation every day; it must have been during the pending of the negotiation, as I met him every day.

649 Ques. Did Mr. Coyle come to you during that time, and state that if Mr. Huntington's claims *was* not admitted, that he, Huntington, would retard the settlement of any claim Perry Fuller & Co. had against the Government, or any statement to that effect, or of that import?

Ans. Mr. Coyle came to me a half a dozen times. I recollect him stating to me one day that, in his opinion, Mr. Huntington would do it.

Ques. Did he suggest to you that you give an order to Mr. Hunting-

ton for the amount of the claim of the First Nat. B'k against you or your firm. Did you agree to the proposition?

Ans. I rather think he did so suggest. I don't recollect whether I did or not. It is not likely that I should.

Ques. Did Mr. Coyle represent to you that he had conferred with Mr. Huntington, and that he, Huntington, would not agree to any proposition that did not embrace the settlement of the Hayes suit in St. Louis?

Ans. He did, sir.

Ques. Did Mr. Nelson represent you in any of that negotiation?

Ans. I think he was there at one time.

650 Ques. Were you ever in the office of Mr. Fant with Mr. Coyle?

Ans. Frequently.

Ques. On such an occasion, did you say anything to the effect that you wanted an immediate settlement of the matter with Huntington.

Ans. Yes, sir, I did.

Ques. Did you urge that the securities offered were more than ample to justify Huntington in an immediate settlement & delivery of your drafts?

Ans. I did.

Ques. Did you state then, that Hayes was at St. Louis, drunk, and you did not know what the fool would do?

Ans. I don't recollect of making such statements. Still I might have done it. I don't recollect anything about any conversation had then.

Ques. What were the securities that you offered Huntington?

Ans. Claims for damages; some were in the nature of vouchers, and some reports of boards of surveys. I think I authorized Mr. Vo'rhees to offer claims on lands in Tennessee as security. The nature of

651 those claims was deeds of trust.

Ques. In whose name?

Ans. I sent Mr. Nelson down to fix it up. I sold the deed of trust to Mr. Nelson's firm. We were owing them largely for services, and desired to settle it up. How they took the papers I don't know. It was formerly in the name of Perry Fuller.

Ques. Was it after Mr. Nelson had made that settlement of the Tennessee claim that you authorised Mr. Vo'rhees to make the offer to Huntington?

Ans. Yes, sir.

(Witness desires to state) that I called upon my attorneys, Messrs. Doolittle, Davis, Lyon & Nelson, for the loan of the deed of trust that they held on the Tennessee property, for three months, or as soon as the Government paid the vouchers for the purpose of settling with Mr. Huntington, for the indebtedness held against the firm. These negotiations fell through, because Mr. Huntington would not accept. I don't know that they fell through because I would not give up the trust-deed. After the negotiations fell through, I think it very likely, that I had further conversation with Mr. Coyle; I attributed the delays

652 in the settlement to Mr. Huntington. In my conversations with Coyle, I afterwards learned that the Government had made an order, staying the settlement of our claims. Perhaps I did talk with Coyle about that matter.

Ques. In talking to Coyle about that order, did you say you didn't care, that you had the court & jury at St Louis all right.?

Ans. No, sir; I never made such a statement.

Ques. Did you also say, "and you would gain the case anyhow," & let Mr. Huntington whistle for his money?

Ans. No, sir; have no knowledge of such conversation with Coyle or anybody else.

Ques. In 1869, were you indebted to Mr. Coyle?

Ans. No, sir; I do not recollect of meeting Coyle at a place on a street running out of Broadway near Delmonico's. I do not recollect of him then asking me, payment of money.

Ques. Do you recollect of telling him at any place in New York City, near Delmonico's, that you had not received as much money from
653 Stettaur as you expected, & that all you had received from him had been employed in the purchase of a stock of goods for Kansas or any words to that import.

Ans. No.

Ques. Did you, in such conversation, tell him that you would soon realize on these (goods) and remit to him (Coyle) from Kansas?

Ans. No, sir; I never talked to Mr. Coyle on the subject.

Ques. Did you, at such an interview, appoint a meeting with Mr. Coyle, at the St. Nicholas, at five o'clock in the evening of some day?

Ans. I recollect no such interview and no such appointment. I did not agree to pay him at such a time all I could spare and make some satisfactory arrangements for further payments.

Ques. Do you recollect meeting Mr. Coyle, by appointment, at the St. Nicholas, on five o'clock of any day in the year 1869.

Ans. I don't recollect anything about it. I do not know of
654 having any pieces of dry goods at the St. Nicholas while Coyle was there, which I had been purchasing, & of showing the same to Coyle. I don't recollect; I don't know of offering to purchase any goods at cost for Coyle, at places where I had purchased.

Ques. Do you recollect being with Mr. Coyle at the St. Nicholas & Mr. Hayes came in & spoke about some insurance?

Answer. I do not.

Ques. Do you recollect of saying to Mr. Hayes in Coyle's presence, at the St. Nicholas, that I had never paid such rate and would not now, or words to that effect?

Ans. I do not recollect of saying such to Mr. Hayes, nor words to that effect; there never was any conversation at the St. Nicholas between myself, Hayes, & Coyle in reference to my paying Coyle money realized from the Stettauer claim. I did not tell him at any such interview that it was necessary to use the money realized from the Stettauer claim in purchasing goods for Kansas. I did not pay him $100 in
655 Hayes' presence, at the St Nicholas, nor in Hayes' absence, as a debt. I might have loaned him money. I did not tell Coyle I had used a large amount of the money and securities received from Stettauer, in purchasiug goods from Buckley, Sheldon & Co.

Ques. Did you write a letter to Coyle from Kansas?

Ans. Not that I recollect.

Ques. Did you state to Coyle that there was any reason why you did not wish to hold property in your own name.

Ans. No.

Ques. Did you, during months of July & August, 1869, or either of them, have any conversation with Coyle, in which you express' apprehension of being arrested by the Government?

Ans. I don't recollect of having any. When I went down to New Orleans I was under arrest, and I went down to New Orleans to answer that arrest, when I returned to Ottawa, in September, 1869. I left St. Louis for New Orleans while Hayes was there attending to the seizure of his goods.

Ques. Did you, in July 1869, tell Hamilton G. Fant that you had brought Mr. Hayes to New York, to settle the Stettauer matter?

656 Ans. It is likely I did.

Ques. Did you also tell him that you was apprehensive that if the settlement was delayed with Stettauer the Government of U. S. might attach the money you were claiming from Stettauer, or words of that import?

Ans. I recollect no such conversation.

Ques. Did you also tell him that you had got Mr. Hayes to place an attachment on Stettauer, in order to prevent any creditor from interfering until the settlement was made with Stettauer, or words to that import?

Ans. I don't recollect of any such conversation.

Ques. Had you so stated, would such statement been correct?

Ans. No. I don't recollect of meeting James A. Whalen & Gen'l Steadman & Gen'l Mead at the St. Nicholas, or any other place. The charge on which I was arrested at St. Louis, was a charge of defrauding the Government as collector at the port of New Orleans, or of aiding & abetting in such fraud. Since two or three months prior to that

657 arrest I have had no property ostensibly, or in my own name. The earnings of my business in the West we lost. We lost largely in 1864, '5, & '6. I was first acquainted with Mr. Hayes in the winters of 1863 & '64. Saw him first in Washington. He was clerk in the Indian Bureau. Had business in the room where he was employed, & got acquainted with him through having vouchers to present. I was then an Indian trader. Was a member of the firm of T. C. Stevens & Co. We were contractors with the Government in supplying Indians. I did not induce Hayes to come West. I knew of his coming West when he first came as Mr. Sells' clerk; that was in 1865, I think. They had headquarters at Lawrence. Our firm furnished goods to Sells, as superintendent of the Indians. He was southern superintendent. I think we furnished Sells' superintendency about $500,000. Our firm had nothing to do with Hayes as the clerk of Sells, to my knowledge. No arrangement was made with Hayes by our firm by which Hayes was to receive any commission on any goods furnished by us to Sells for his

658 superintendency. Rec'd no knowledge of any such arrangement from my copartner. Mr. Hayes kept his account with us in preference to keeping it at the bank at that time; don't know that we were indebted to him in any large amount at that time. If we had been indebted to him in the sum of $20,000 or $30,000 I would have known it. I would have known it if we had owed him $5,000. I was only there from June to October. I don't know how much money we owed him. To my knowledge he had no means of making money aside from his salary. I was intimate with him while I was here at Lawrence. I first employed Hayes after he returned from Kansas; I think it was in 1867. He was employed as assistant book-keeper, and we sent him wherever it was necessary to have business attended to. His salary was $250 per month, and his expenses when traveling. This is my recollection. He remained at that salary about eighteen months in all. He then went to Rochester. He was with me at New Orleans three or four months at $2,000 per year—might have been $2,500. I think he went from

659 New Orleans to Rochester. Mr. McDonald had a settlement with him some time in March, 1869. I think our firm has done no business since that time except collecting & settling. We commenced closing up our business in September, 1868. We have continued the business of closing up from that time to the present as fast as we could.

Have made no investments since that time. Have frequently borrowed small sums of money for a short time. Borrowed from different banks and individuals—some in New York, some in Washington, probably not over $1,000 at a time. All these sums are repaid.

Ques. At the time of the attachment sued out by Mr. Hayes against you, to what amount were you indebted to him?

Answer. I cannot answer that question correctly from the fact that Mr. Hayes had made a settlement with McDonald, in which he had rec'd some steamboat stock, which he stated to me was not worth what he had allowed McDonald for it; that he had been imposed upon, & consequently he would not abide by the settlement with McDon-
660 ald; that was his foundation for the attachment, as I understand it. I did not pay him anything at the time the suit was withdrawn. I agreed that McDonald & I would make a full settlement as soon as we had collected our vouchers, and pay him up according to the settlement made between McDonald and him. I did not know anything about the terms of the settlement, & wanted both parties brought together.

Ques. Was that all the inducement you held out to Hayes to withdraw?

Ans. Yes, sir; upon that assurance alone he discontinued the action. We have never had a settlement since that time with Hayes. I looked over the settlement made between Hayes and McDonald. I could not tell whether the settlement was a correct one without examining the books. I came here to be examined as a witness in this case. The distance from here to my place of residence is about 115 miles, the ordinary travelled route. I came alone, at the request of the attorneys for Mr. Hayes—at Mr. Nelson's request. My expenses were not advanced. I got here on the 27th of October. I think the agreement between
661 Hayes & McDonald showed about $21,000 due to Hayes. I cannot state whether that amount was due to Hayes or not.

Re-direct examination:

I was not called to St. Louis by reason of the seizure of these goods. I have been talking with my son, and he says I did not arrive in St. Louis until the 7 or 8 of September; I think he is more correct than I. I did not meet Hayes on my arrival at St. Louis; Mr. Hayes came about 3 days after I got to St. Louis. Mr. Hayes asked me to assist him in getting surety. Ed. Fuller took no part in releasing the goods of Hayes, so far as I know. Ed.'s business in St. Louis was, I suppose, to see his sisters, who I had telegraphed to him would be there on their way to school.

Ques. Did you, at any of the conversations which you have testified to as had between Mr. Coyle, Mr. Fant, & yourself, ever make a proposition for the settlement of the Hayes suit in St. Louis?

Ans. I did not.

Ques. In any of those conversations was the subject of the
662 settlement of that suit broached; and, if so, by whom?

Ans. Yes, sir; by Mr. H. G. Fant. He has often broached the subject to me. My response to those propositions was that I had nothing to do with Hayes' business.

Ques. You have testified that you had offered Mr. Huntington security on Tennessee property; did you make the offer to Huntington personally?

Ans. No; I did not.

Ques. Did your firm (P. Fuller & Co.) issue certificates of deposit to its depositors?

Ans. Yes, sir.

Ques. Were certificates of deposit issued to Hayes?

Ans. I have seen some such certificates issued to Hayes. I have seen some of them. Our book-keeper & business agent, Mr. De Wolf, issued the certificates. Mr. Hayes was a book-keeper of Mr. Sells for about 18 months from about April, 1865.

Ques. How much of that time were you in Lawrence?

Ans. Not more than 7 months of the time all told. Cannot tell whether Hayes deposited after I left.

Ques. During your absence might he not have deposited largely
663 and you not have known?

Ans. Yes, sir.

Re-cross-examination:

I think the language I used in reply to Mr. Fant was, I have nothing to do with Mr. Hayes' business. Mr. Nelson was present at that time. He was not advising me about this matter. He appeared as Mr. Hays' representative.

Ques. Be kind enough to tell me what interest Mr. Hayes had in the matter you were then negotiating?

Ans. None at all.

Ques. Did you advise with Mr. Nelson and inform him of the propositions Mr. Fant was making?

Ans. I did not, sir. Mr. Nelson was present in the room, and heard the conversation, but I did not advise with him. We were all in Mr. Fant's house in Georgetown—Fant, Coyle, Nelson, and myself.

Ques. During the conversation did Nelson suggest that fact, to wit, that you had no interest in Mr. Hayes' matter?

Ans. Yes, sir.

Ques. Did you personally make any offer to Huntington or to
664 any one representing Huntington?

Ans. All my negotiations where thro' my attorney. I made no offer personally. I had no other object in that other than the fact that I employed an attorney, and chose to abide by his decision.

Re-direct resumed:

Ques. At the time the matter of settling Hayes' suit was broached by Fant were you engaged in any other matter with Fant?

Ans. I was engaged in settling the matter of Perry Fuller & Co. with 1st National Bank, (Hutington's matter.)

Ques. Is that the matter you refer to as Mr. Hayes having no interest in?

Ans. Yes, sir.

Ques. To whom did Mr. Nelson suggest the fact ("that you had no interest in Hayes' matter?")

Ans. We were in general conversation, and it was generally understood that I had nothing to do with Mr. Hayes' matter, nor he with mine.

Ques. Did Mr. Nelson ever make such a suggestion to you personally?

Ans. No, sir.

PERRY FULLER.

665 *Testimony of Mr. McDonald.*

Mr. McDONALD, being duly sworn on the part of the plaintiff, testified as follows:

Direct examination by Mr. Broadhead:

Q. Where do you reside?

A. Little Rock, Arkansas.

Q. Were you at any time engaged in business with Perry Fuller?

A. Yes, sir.

Q. For how long a time?

A. To the best of my recollection, it was from 28th February, 1863, until late in the fall of 1865.

Q. What was the general nature of that business?

A. Merchandizing and contracting in the southwestern country, Arkansas, Kansas, and the Indian country.

Q. Did that business of the firm terminate in 1865?

A. The last contract we had was in 1865. It was completed in the spring of 1866—January or February, 1866; that is my recollection.

Q. What was the style of the firm?

A. It was first McDonald and Fuller, and at Lawrence it was P. Fuller and Co. The designation was made in the co. in order not to conflict with the other business.

Q. The business, then, was carried on at more than one place?

A. Yes, sir; at Fort Smith, Fort Gibson, Fort Scott, Lawrence, and Leavenworth.

Q. And the business in Kansas was in the name of Perry Fuller & Co.?

A. Yes, sir; at Lawrence it was in the name of Perry Fuller & Co.

666 Q. At what time did you say the business was closed—that your connection with the firm had dissolved?

A. The publication of dissolution, if I recollect right, was not till 1867, and we had no company business, except that of settling up our old business in 1866—the spring.

Q. What was the occasion of the dissolution or disconnection of yourself with the firm?

A. The dissolution was by mutual consent. I had no further business, and moved from Fort Scott, where I was then residing, to Little Rock, Arkansas, and we then dissolved by mutual consent. I went into the banking business, and he went into business with Mr. DeWolf in New York.

Q. You then went into public office yourself about that time?

A. Yes, sir; shortly afttrwards.

Q. Do you know W'm Hays?

A. I do, sir.

Q. What time did you become acquainted with him?

A. I won't be positive; I think in the spring of 1864, or very early in 1864.

Q. What time was he first employed in transacting business with your firm, Perry Fuller and Co. or McDonald and Fuller?

A. Maj. Fuller always told me that Mr. Hays had been doing a great many things for him during the whole course of our business.

Mr. HENDERSON. You need not state that.

667 The WITNESS. I can tell nothing of myself, as I was entirely in the West, and he was in the East. I will state that, during the partnership of Maj. Fuller and myself, his business was in New York, Washington, and Kansas, and I was located, during the whole of this time in Fort Smith and in Arkansas; consequently, I can know of nothing that transpired between him and the different co-operators of the concern, except by letter or by what he told me.

Q. Did you make a settlement with Hays against the firm of Perry Fuller and Co. in the spring of 1869?

A. I did, sir.

Q. Who was present when that settlement was made?

A. The first, I think, I had with Mr. Hays was between him and Mr. J. E. Dillon; the last one, we agreed upon the settlement; Mr. Henry E. McKee, of Fort Smith, was present.

Q. Where was Mr. Fuller at the time that settlement was made?

A. If I recollect right, he was in New Orleans, but I don't know where he was.

Q. Were you fully authorized by the members of the firm to make that settlement?

A. I had no one to consult, sir.

Q. Mr. Fuller was interested, wasn't he?

A. Yes, sir; but in that settlement that I made with Hays I regarded myself as equal partner with Mr. Fuller, and had full authority to settle up, as I supposed, as I did.

668 Mr. HENDERSON. The firm had been dissolved?

A. Yes, sir; except for the settlement of the old business.

Mr. BROADHEAD. (Handing paper to witness.) I will get you to look at that paper. Now, please, did you have that paper with you when that settlement was made?

A. I don't recollect, sir, whether I did or not.

Q. Did you have a statement from the books of Perry Fuller & Co.?

A. I got a statement afterwards from Mr. Hays. The settlement that I made with Hays was on certificates of deposit.

Q. What was the result of that interview?

A. I presume I will have to make this explanatory in order to show the connection: Mr. Hays, on his return from New Orleans, as I supposed, came to me and threatened me with suit upon some old matters of Perry Fuller and Co.; I asked him to show me what they were. After going to New York—I don't know whether he went to New York or not, but, after two or three days—he called on me again and showed me what purported to be certificates of deposits of the firm of Perry Fuller & Co., and I recognized them as such, and I told him I was astonished at the amount that I appeared to owe him; that, in all the statement' that been made before of the indebtedness of the firm I had not noticed any such amount as that as being due to him, except through Mr. DeWolf, but that as they appeared to be the paper of the firm that I had certain assets of the firm of Perry Fuller & Co. in my
669 hands, and that if he saw fit to take them that I would settle so far as those assets would go and no further. I then told him what they were, and the paper or exhibit that were read in court—that passed between Hays and myself—shows fully the settlement what was or with him and me. I turned out to him this steamboat stock, stating to him fully what it was. I gave him the option between a piece of land in Kansas, that I had taken at that time, steamboat stock, some Kansas City property, and he elected them himself which to take. I gave them to him to give up the certificates of deposit, and cancelled them, save out, if I recollect right, a balance of—I don't know what it was—some $6,000 probably.

Q. What did the steamboat stock go into the settlement as?

A. Something over $12,000. My recollection is $14,000; but the books show it was $12,000. I know I asked him $14,000 first.

Q. What did you state to him in regard to the condition of the steamboat stock?

A. I told him just what the facts were at the time; that this stock represented, as near as I could tell, about one-fourth interest in, I think, the Memphis River Packet Co.; that the company of Perry Fuller & Co. had paid into this packet co. so much money, something the rise of $12,000; but that I would not sell that or anything else with any contingenc'es whatever; that he must take it subject to what I did at the time I purchased it, without regard to what transpired afterwards.

670 So the documents that I signed and gave him there will show.

Q. He took it then at the amount you had paid on the stock?

A. Yes, sir; I presume that is the fact. I think I charged $14,000 for it. My recollection was that I had charged him $14,000, but I may be mistaken in that.

Q. Did you know or tell him what the real value of the stock was?

A. I don't recollect, sir, that there was any question about it. The stock at the time was presumed to be worth all he paid for it. They did some disorder afterwards that destroyed the value of it.

Q. It was considered good for that amount?

A. Yes, sir; I considered it good.

Q. How long had the firm of Perry Fuller & Co. owned that stock?

A. If I recollect, about two years.

Q. What was the condition of the Kansas City property?

A. Well, sir, the Kansas City property—I can only tell you what I think, if I recollect right, was what De Wolf and Hays told me. They told me the title was in the name of Perry Fuller, and I told them that I could hardly believe it, because I knew it to be the property of McDonald and Fuller.

Q. What was done with reference to the Kansas City property?

A. I gave Mr. Hays an order on Fuller for the personal property, in accordance with their statement.

671 Q. At what valuation was the Kansas City property put in the statement?

A. Well, I won't be positive about that; I think $7,000. We paid $10,000 for it.

Q. What did the certificates of deposit and the interest upon them amount to at the time of the settlement?

A. I won't be positive. I think the whole settlement amounted to $21,000.

Q. Did you undertake to make any arrangement on the surplus steamboat stock at $12,000, and the Kansas City property at $7,000, making $19,000 the surplus between that and the amount claimed by Hays?

A. I can't say what was done or said about that. There were some side transactions, but I don't recollect. I was in the midst of business, and paid but little attention to it.

Q. Were any deductions made on account of over-payment on the book account of Hays?

A. I won't be positive; think there were some slight accounts, but I don't recollect substantially correct enough to make any statement about it.

Q. Did you inform Mr. Fuller of that settlement at any time?

A. I think not, sir. He spoke to me, if I recollect right, about it afterwards, but only in a general way of business.

Q. Do you know anything as to how the book account between Fuller & Co. and Hays was at that time?

A. I know nothing except the statement furnished by De Wolf to Hays, as I stated before. I was not at any time, except once or

672 twice during the copartnership in the eastern office.

Q. Was that statement made in writing?

A. Yes, sir; it was. I have an abstract of it.

Q. Do you know whether this paper that you have in your hands is it or not?

A. It is not this kind of a statement. It was a general abstract of the condition of affairs of Perry Fuller & Co.. There was no personal affairs, no statement of Mr. Hays' account with the firm, or any other individual.

Q. Who kept the books of Perry Fuller & Co. at the time you quit business?

A. Well, *after* the statements I received after they went to New York were from Mr. De Wolff or Mr. Hays; I had received prior statements from Mr. Seymour.

Q. Did you know, during the existence of that firm, of Mr. Hays loaning money to Fuller & Co., or performing services for that firm in any capacity whatever?

A. Yes, sir; I had every reason to believe he was performing extraordinary services for them, but, as I have stated, I myself know but little, as I wasn't in the country at the time at all. I can only state what I got from my partners in the way of commercial intercourse.

Q. Are you acquainted with Mr. Seymour?

A. Very well, sir.

Q. Do you know his handwriting?

A. I do, sir.

Q. I will get you to look at these two entries and state whose handwriting they are in. (Handing book.)

673 A. All these from here down are in the handwriting of J. C. W. Seymour.

Mr. HENDERSON. Is "W'm Hayes," in his handwriting?

A. Well, that "Hayes" is; his writing is so peculiar. You can prove by Mr. Jones, cashier of the Second National Bank, his signature and handwriting. No man writes like him that I have ever seen.

Mr. VOORHIES. What position does he occupy now?

A. Cashier of the First National Bank, Fort Smith; I took him there in that capacity.

Mr. BROADHEAD. These are entries to Mr. Hays' credit?

A. They appear to be on the credit side, sir.

Cross-examined by Mr. Henderson, counsel for the defendant:

Q. Did you take up those certificates of deposits when you settled with Mr. Hayes?

A. I took up all save one, sir.

Q. Have you got them now?

A. No, sir; I have not; I *do* not know I was to come here at all until last Friday; I was in New York when I was summoned.

Q. Will you tell us whose handwriting that is? (Handing a paper to the witness.)

A. It is F. A. De Wolff's.

Q. Do you remember whether the handwriting of the remainder of those certificates of deposits the same?

A. I think, substantially, they are. I think one or two, if

674 I recollect right, the signature was affixed by Mr. Fuller.

Q. Do you recollect how many of them had Fuller's signature?

A. Not more than two.

Q. You have those certificates yet that you took up?

A. Yes, sir.

Q. You did not destroy them?

A. No, sir; I have all the certificates.

Q. You say you were very much surprised to see those certificates?

A. I was surprised at their not being—I had been told that the indebtedness of myself & Major Fuller had been paid up to within a given amount; I found a very much larger amount to pay than was represented to me in the former settlement.

Q. You were surprised at the condition of the accounts of Hays?

A. No, sir; I was surprised at the condition of all the accounts.

Q. Did you know of those certificates of deposit being issued?

A. I had been told so.

Q. Did you know for what?

A. I had asked the question of Major Fuller, & knew a great deal of myself from general intercourse, that he had done extraordinary services for the firm, & it had paid him what I regarded as extraordinary prices.

Q. You had nothing to do with the issue of those certificates; you did not authorize anybody?

A. No, sir.

Q. Was De Wolf partner in the concern at the time?

A. No, sir; he never became a member until he went to New York; he was a partner in the house at Lawrence.

675 Q. At what time did he enter there?

A. If I recollect right in 1864.

Q. How were those houses connected—an equal interest?

A. No, sir; at Fort Smith the firm was McDonald & Fuller, J. C. W. Seymour, & Mr. Brooks; at Lawrence it consisted of McDonald, Fuller, & Mr. De Wolff. There was a percentage, I suppose, besides that, but they were not defined—contingent interests among the houses; that is, there was interest in contracts that were not in the regular mercantile business; in each different place business was conducted under a different head, so as not to confuse. A man might have an interest at Lawrence that did not have any at Fort Smith, or Fort Scott, or Fort Gibson. Mr. McKee was a member of the firm at Fort Gibson, & so on all through the country. Every different firm had its own seperate books.

Q. Then you settled upon the presentation of these things by Mr. Hayes?

A. I did, sir.

Q. And you took it for granted it was true, because he held them?

A. I took it for granted they were true because they were in the handwriting of the firm, & I regarded myself as bound for them.

Q. Did you insist upon waiting until Mr. Fuller could be consulted?

A. No, sir.

Q. If you felt any surprise, why didn't you have Fuller present?

A. I should have if he did not take such property as I saw

676 fit to give him.

Q. Did Hays have any interest in any of those concerns up there?

A. Not to the best of my knowledge.

Q. He was not a partner in any of them?

A. Not to the best of my knowledge. He never was reported as such.

Q. Was the title of Perry Fuller & Co. carried at the head of any of the houses, except at Lawrence?

A. Yes, sir; the same style of the firm was used in New York. Major Fuller did issue a circular from New York, after going there, without

my consent, & he put my name on the circular as one of the firm. Upon receiving it I declined to act or to be a member of the firm, & he published, by my request, a dissolution of the New York house, & I put it in the papers, in Arkansas, at the same time; I declined being a member of the firm in New York at all.

Q. I understand that you were part owner of those lands that the house in Kansas had been taken for. How did it happen that the title to this property was taken in Edward Fuller's name?

A. That is what I would like to know myself; I do not know, sir. I know we took, as part payment, from North & Tuck that 40,000 acres of land in Kansas.

Q. Did you give any authority to put it in the name of Edward Fuller?

A. I did not, sir; I allowed Hayes to keep the certificate in his hands representing about the amount he was to take up for this property. The only contingency about that certificate was that if
677 Edward Fuller refused to make over this property to him, then, of course, the certificate would be held in full force and effect.

Q. Did you ever speak to Edward Fuller about it?

A. I never have seen him since, to the best of my knowledge.

Q. You had nothing to do, then, with making any entries upon the books, & you do not know a word about entries upon the books at Lawrence, except from what you saw on the books there?

A. I never made one, to the best of my knowledge.

Q. You settled up those certificates?

A. I did.

Q. Was De Wolff present?

A. No, sir.

Q. You did not consult with Perry Fuller about it?

A. I had not an opportunity.

Q. You did not know whether those certificates had been paid or not?

A. When certificates are paid, they are usually taken up & indorsed on the back; they were in full force & effect as far as I was concerned. I did not know what arrangements Perry Fuller & Hays had made.

Q. What was your design in settling before hearing from Fuller?

A. Well, I had this property in my hands belonging to the firm of McDonald & Fuller. I had reason to know those certificates were out from the statements I had received from De Wolff after the time that Major Fuller had made this statement upon our dissolution in New York. My anxiety to take up this certificate was, in the first place, to
678 prevent, what was very obnoxious to me, to have a suit against me at all, & he threatened me with a suit—Mr. Hays did.

Q. Where was Fuller then?

A. In New Orleans.

Q. You saw him a short time after?

A. I did see him after; I do not know how long.

Q. Did you tell him you had settled?

A. I did not, sir. He alluded to it in the course of conversation, but that was all.

Q. Did he say anything about the certificate of deposit?

A. No, sir.

Q. Did you call his attention to them?

A. I did not.

Q. Did you call his attention to the fact as to what you had done in the settlement, what property you had agreed to convey?

A. No, sir; not to the best of my recollection.

Q. You never did mention it to him from that day to this?

A. I do not recollect that I did, as the books will show, I presume, at least. I so received a statement afterwards that the entries were made, in accordance with our usual mode of doing business, on the books of the company in New York, as I suppose. I have a statement from Mr. De Wolff, in which he includes this settlement of Mr. Hayes.

Q. And you made a settlement upon the statement of De Wolff?

A. I made a settlement upon the prior statement of De Wolff and the certificate presented by Mr. Hayes.

Q. Isn't it your impression that the most of those certificates were issued by De Wolff?

679 A. I think they were, sir. He was in the habit of issuing about all the paper that was issued by the firm; he was the clerk or book-keeper & partner in the Lawrence house; kept the books there.

Q. Is this ledger that you refer to here the ledger kept at the Lawrence house alone, or did it include the business of any other house of yours?

A. I do not know.

Q. Are you familiar with this ledger?

A. I am not, sir. I never examined it, only in this court the day before yesterday.

Q. You did not examine it, then, at the time of the settlement?

A. No, sir. The ledger was in New York and I was in Washington.

Q. Did you settle simply without seeing your partner or the books?

A. I should have settled the same if I saw the books. The certificates were evidence of indebtedness to me.

Q. Still you say you were surprised to see them?

A. Yes, sir; I was surprised; I had supposed they were taken up.

Q. And you neither consulted Mr. Fuller about it before, nor have you ever consulted him since?

A. Not, except in a general way, talking about our business—general conversation. Major Fuller & I did business amounting to a good millions of dollars, & I never did any business except by correspondence, & all my entries were made upon my statements in writing to him, & the entries made on the books. I required of the book-keepers at certain intervals statements of the condition of affairs, & upon those I acted always. I never had any trouble up to the time that we dissolved partnership in all that vast business that we did.

680 Q. You never saw this book, then, after the dissolution of your partnership until the day before yesterday?

A. Not to the best of my knowledge.

Q. Did you ever see the journal?

A. I probably have; certainly it lay on the desk, but I never examined it.

Q. Is that the statement to which you referred that Mr. Broadhead handed to you?

A. No, sir; I do not know that I ever saw this. I never saw anything I settled upon except those certificates of deposit. That was all I settled upon. Any other statements must have been either verbal or shown to me. He made the declaration upon his own responsibility. I had nothing to do with anything but the certificates.

Q. Did you ever see any books of account?

A. No, sir; not to the best of my knowledge.

Q. Did you settle up any business besides that with Hayes?

A. No, sir.

Q. Did you settle with any other of the parties?

A. I did with other parties.

Q. Did you ever have a settlement with Major Fuller of the concern?

A. No, sir.

Q. How long did Major Fuller live after the spring of 1869—the time you made this settlement?

A. He died about a year afterwards.

Q. You saw him frequently, didn't you?

A. Yes, sir.

Q. Why did you not make a settlement of your affairs?

681 A. Because company matters were not settled.

Q. Why did you not make a settlement or mention to him the settlement you had made?

A. It would take a great deal longer than it has to make this trial for him & me than to look at our accounts, & they had always been kept by our book-keepers and the final settlements made each quarter, or monthly, as requested.

Q. There would not have been any difficulty about you & Fuller settling, if the book-keeper kept correct accounts?

A. There would not have been any difficulty, I presume, if we had ever gone to work at it; I paid probably $100,000 more than there is shown on those books at all for which I have no credit whatever up to this time; it may be regarded as a very loose way of doing business, but I would rather have paid $100,000 than be called into court at all.

Q. Why?

A. Because it was a very unpleasant matter to me indeed, sir; Major Fuller, the court knows here, and every one else, became embarrassed in a good many cases after our dissolution, which was very unpleasant to me, & I paid a good many things & settled a good many cases rather than have any question about them at all; paid them in order to get rid of them.

Q. A good many of them you thought were incorrect, did not you?

A. I don't know, sir.

Q. You stated, I believe, that Hayes was not a partner in the house out there?

A. Not to the best of my knowledge.

682 Re-examined by Mr. Broadhead, counsel for the plaintiff:

Q. You never had any difficulty about those matters?

A. No, sir; I never talked with Major Fuller specially in regard to this settlement. I have talked with him frequently in regard to our business, but only in a general way.

Q. He was a man that did not talk very much about his business to any one?

A. No, sir, he did not; he was a very reticent man.

Q. You say your recollection is that two of those certificates of deposit you settled were signed by Major Fuller?

A. That is my recollection, I am not positive; the certificates can be produced; I know Mr. DeWolff's handwriting very well, & Mr. Seymour's and Mr. Hayes'.

Q. You declined going into the firm in New York, in 1866?

A. I did, sir.

Q. Was not that because you were elected to the U. S. Senate?

A. No, sir.

Q. You say Mr. DeWolff was in the habit of issuing all such papers for the concern?

A. He was, sir.

Re-examination of Mr. Hayes.

Mr. Hayes recalled for the plaintiff, testifies as follows:

Direct examination by Mr. Broadhead:

Q. Do you recollect meeting Mr. Coyle at No. 3 Pine street, the 27th of August, 1869?

A. I remember meeting him there, yes, sir,

Q. You had known him before that, had you?

A. I had known him.

683 Q. Did you say to Mr. Coyle at that time, that Mr. Fuller was at Belcher's purchasing a bill of goods; that Fuller had realized a much larger amount of Stettauer on account of your services in making a settlement?

A. I did not. He asked me if I could tell him where Major Fuller was, and I named the place that Maj. Fuller had said to me he would be. The name of that place I do not now recollect, but he had an appointment somewhere, and I presume I named the place where he had the appointment.

Q. He was inquiring for Maj. Fuller, was he?

A. Yes, sir.

Q. You did not tell him that he was purchasing goods for Kansas?

A. I did not.

Q. Do you recollect of meeting Mr. Coyle at the St. Nicholas hotel in the afternoon on the same day, in company with Maj. Fuller?

A. I do not.

Q. Did you see him at the St. Nicholas hotel that afternoon at all?

A. I did not.

Q. Did you have any conversation with Maj. Fuller with reference to freight or insurance on goods, in the presence of Mr. Coyle, at the St. Nicholas Hotel, on that afternoon?

A. I never did.

Q. Do you know of Mr. Coyle's asking Maj. Fuller for money at any time during the time that he was in New York?

A. He never did in my presence to my knowledge.

Q. You had not conversation, then, with Major Fuller about the purchase of goods at Kansas, in the presence of Mr. Coyle at the St. Nicholas hotel?

684 A. I never did, sir.

Q. Do you know Clifton Hellen?

A. I do.

Q. Where did you first become acquainted with him?

A. First, I think, in the winter of 1868–'9, in New Orleans.

Q. Do you recollect seeing Mr. Hellen at the house of Buckley, Sheldon and Co. in August, 1869?

A. I do.

Q. Who else was present?

A. Mr. Butts and Mr. Buckley, when he came in. I think that was all. They were then standing there. I can go on and simply record the facts in the case.

Q. Well, state all.

A. I was standing at Mr. Butts' desk in conversation with him touching the insurance I had asked them to effect for me. Mr. Hellen came up and presented a check, and Mr. Butts declined it. I was not referred to but stepped on one side, and he says, "I do not know you, sir." I looked at it, looked right over at the cashier's desk and saw the

ignature, and saw it was good, and I said, "It is all right, Mr. Butts," and immediately Mr. Fuller stepped out from what I think is a passage, which comes in from where the goods are stacked up, in company with Mr. Wheeler, and stepped up far enough, like stepping round a corner, like this, and Mr. Butts reached his head through the pigeon-hole and he says, "Mr. Fuller, here is a check of yours;" says he, "That is all right, just pay it." That was all that passed.

Q. Was there any other conversation at or about that time with reference to the insurance on your goods?

685 A. I was talking with Mr. Butts then, with reference to it, and also with Mr. Buckley I had been walking; the distance between the cashier's post and Mr. Buckley's was, perhaps, from here to that post.

Q. What was said in reference to the insurance on the goods?

A. They had stated to me the amount that the insurance company charged, and I said to them that it was too large; that I did not believe I could stand anything of that kind; and, says I, "If that is the rate of insurance, I believe I would rather take the chance myself." This conversation had been running on between us for some little time, when Maj. Fuller came up, and says I, "Maj. Fuller, they are charging me over-insurance here," and he then said to me something about the rates which they charged him on goods that he was shipping on the river, and he said, "They were nothing like that;" I think he qualified what they were.

Q. How long was Mr. Hellen at the counter?

A. I think he was about a minute, maybe two minutes.

Q. Did you meet with Mr. Hellen at the Central Park garden before or after that time during your stay in New York?

A. No, sir; I met him before that quite a long time—met him when he was, as I supposed, upon friendly terms with Maj. Fuller.

Q. How long before was that?

A. It was before I had succeeded in getting Maj. Fuller the Stettauer property upon such amicable terms as warrented us in reaching a settlement between them.

Q. Who was present when you met him at the Central Park garden?

A. Mr. Nelson, and my wife, and Mr. Fuller, and, I think,

686 some one else went up there, and we found Clifton Hellen there on the promenade.

Q. Did Mr. Hellen apply to Major Fuller for money on that occasion at the Central Park garden?

A. I have no knowledge of it, sir.

Q. He did sometimes apply to him for a loan of money, did he—Mr. Helen?

A. It may have passed between them.

(Objected to; question withdrawn.)

Q. Did you say to Mr. Hellen on that or any other occasion not to press Mr. Fuller for money at that time; that he had invested all his money in goods, or would invest it in goods?

A. I did not.

Q. State all that was said at the time you saw him at the Central Park garden, with reference to any of these transactions?

A. That was the only case of any allusion by myself to any matter between him and Maj. Fuller, and it was in this wise: And says Hellen, "The major has shown me a letter you have written to him, and I want simply to say to you that you ought to know the major well enough to know that if you let him alone until he gets through with his matters

that he will do a good deal better by you than you would presume to ask him." That is the sum and substance of all that passed between Mr. Hellen and I as touching Major Fuller. Maj. Fuller showed me a letter in which he threatened him that if he did not do thus and so that it would be an expensive thing to him. I may as well state what it was: that he would embarrass him in his settlement with Stettauer.

687 Q. If he did not do what?

A. If he did not pay him what he demanded of him?

Q. When and where was that?

A. That was in the Central Park garden that I had the conversation with him; but Maj. Fuller had showed me a letter and told me of the letter, it maybe a day or two or three days prior to that.

Q. Do you recollect what month it was?

A. I can't recall distinctly; it was some little time before the settlement made with Stettauer.

Q. Did you have any conversation with Mr. Hellen at the St. Nicholas hotel whilst you and Maj. Fuller were in New York with reference to the purchase of goods?

A. None whatever at any time, sir.

Q. Are you acquainted with Mr. Whalen?

A. I am, sir.

Q. Where did he reside?

A. He resided in New York.

Q. Did you have any conversation with him about going on a bond for Maj. Fuller in the summer of 1869?

A. No, sir.

Q. Did you state to him at that time that you had gone into business with Fuller in the purchase of goods for Kansas, and that Hayes expected to make a good deal of money out of it?

A. I made no statement of the kind to him.

Q. What did you say in regard to that matter—in regard to the purchase of the goods—to Mr. Whalen?

688 A. I may have said to him at some time that I was buying goods; I may or may not; I was buying goods and may have said so.

Q. Did you say anything to him about wishing to make arrangements with him in case you did not make arrangements with Maj. Fuller?

A. No, sir; I will explain there: The gentleman had been trying to borrow money from me, and at first I had given some assurance that I would let him have five thousand dollars, but I afterwards concluded not to do it. The character of his business did not look like one justifying me to do it, and I may have made some remarks to him as an apology when I did not. That was all there was in reference to it.

Q. Did you go into the house with him, of Curran, & Co., while buying goods?

A. He may have followed me in; I often met him on Broadway and chatting and talking with him; and if I stepped in there he may have very likely stepped in there with me.

Q. You did not tell him you were purchasing goods for Fuller or with Fuller?

A. No, sir; never.

Q. Are you acquainted with Waddy Thompson?

A. I only know Waddy Thompson from his approaching me at the Southern Hotel; I never put my eyes on him; I never heard his voice until I saw him in the Southern Hotel, sometime before the middle of

the September, 1869; I have no knowledge that I ever heard the man's voice.

Q. Have you any recollection whatever of seeing him in New York in the summer of 1869?

689 A. I said I never saw him.

Q. Did you make any application for him to go on your bond, or Fuller's bond, in St. Louis, when you saw him on that occasion?

A. No, sir; I knew nothing of the man or his condition.

Q. You had no conversation with him, then, about Maj. Fuller, in 1869?

A. I never saw him in my life until I saw him in the Southern Hotel.

Q. Was any conversation had in his presence about the seizure of those goods in St. Louis when you saw him here?

A. I don't know; never, to my knowledge.

Q. You made no application to him to go on the bond?

A. Oh, no, sir, I did not; the man was a total stranger to me.

Testimony of Mr. Nelson.

Mr. Nelson, being sworn, testified as follows:

Examined by Mr. BROADHEAD, counsel for the plaintiff:

Q. Where do you reside now?

A. At Ottawa, Kansas.

Q. Are you engaged in the practice of law?

A. Yes, sir.

Q. You formerly resided in New York?

A. Yes, sir; until June of this year.

Q. Are you the son-in-law of Perry Fuller?

A. I am now, sir.

Q. When did you become so?

A. In the month of September, 1870, last year.

Q. Were you in Washington City in the winter of 1867–'70?

A. Yes, sir; very often indeed.

Q. In what capacity were you engaged at that time?

A. I was called there, sir; very often in response to telegrams

690 from Major Fuller, from Mr. Voorhees, & Mr. Coyle, relative to negotiations for the settlement of this suit with the First National Bank of Washington. Propositions had been made on the part of the bank, as I understood it, and as I represented Mr. Hayes, and was the only person who had any power, they were always compelled to telegraph for me in order to accede to or refuse any proposition made.

Q. Were you present at those negotiations Mr. Fant spoke of in his testimony?

A. Yes, sir, very many of them.

Q. What was the substance of the memorandum of settlement that was finally proposed?

A. That memorandum of settlement I never saw, but the terms of it were discussed quite frequently in my presence.

Q. Any of those conversations spoken of by Mr. Coyle?

A. Yes, sir.

Q. What was the terms of the settlement?

A. As they were told me?

Mr. HENDERSON. By whom; Mr. Coyle, Fant, Fuller, or Mr. Voorhies?

A. They were discussed among us all at different times; they were

as follows, as I understood them: That Major Fuller was to give an order or promise to Mr. Huntington, that out of a certain sum to be realized from a claim which Mr. Chandler & others had against the Interior Department for damages sustained by a certain seizure, to the amount of the claim which Mr. Huntington said was due the bank from the firm of Perry Fuller & Co. Upon that fact this suit against
691 Mr. Fuller, under which those goods were attached, was, of course, to be discontinued, &, consequently, the amount held here would be released, & would go to Mr. Hays. Then it was proposed something as follows: That, as Mr. Fant had a certain sum of money coming to him for services out of this "hay," claim, as it was called, and as Mr. Coyle was to get something, & as a great many other people in Washington were to get something, they were each to contribute from the sum which they were to receive from this claim in order to make up the difference between $15,000 seized, which was realized from the sale of those goods, & the real value of the goods; that is, as I understand the matter.

Q. What "hay" claim was that?

A. That is the one I referred to as made by Mr. Chandler; it was so called, although it really consisted, really was founded upon seizure made by the rebellion forces down near Cabin Creek, during the war. They took quite a large amount of goods belonging to Chandler and other people, & also burnt a great amount of hay which they had put up there in order to carry out one of the contracts in which Perry Fuller & Co. were interested, & it was always known & distinguished in our conversation as the "hay claim."

Q. You were acting, as you say, as attorney for Mr. Hayes?

A. Yes, sir; & he was acting as attorney for Mr. Fuller. Mr. Voorhies always acted as his attorney.

Q. During these interviews did Mr. Fuller ever lay any claim to those goods that were seized in St. Louis?

A. On the contrary, he always specifically denied, & expressly
692 denied any connection whatever with the matter. Major Fuller denied always any connection whatever with Mr. Hayes, or any interest in those goods.

(Mr. Henderson, def't's counsel, objected.)

A. I can't give the exact words, as a matter of course, but I know very well what the substance was, for it was repeated over & over again. Major Fuller, in the conversation testified to by Mr. Coyle & Mr. Fant, always told them, "Gentlemen, you make a mistake there, I have nothing to do with Hayes' business, that is a matter he or his attorney must settle. I have no power to act in the matter. I can settle my matter, & whoever represents Mr. Hays must settle his; I have nothing to do with Mr. Hayes." That was reported over & over again, & particularly so at the meeting at Mr. Fant's house, in Georgetown, *Washington*, where Mr. Fuller declined to take any part in the conversation between Fant & me about the settlement of this suit.

Q. Whom did Mr. Coyle assume to act for in these negotiations?

A. Well, sir, he always carried messages from Huntington, the cashier of the First National Bank of Washington. Whatever Huntington thought or said he brought to Fuller, Voorhies, or myself; that was the only part he acted.

Q. Did he appear to be interested in this claim of Hayes before the Department?

A. Yes, sir; he was at some expense for running around, & so forth.

Q. Do you know anything of this claim of Mrs. Fuller to property that was placed in the hands of Stettauer?

A. Yes, sir.

Q. In what capacity did Mr. Stettauer first hold that property?

693 A. He held that property as trustee for Mrs. Fuller, & we commenced action against Mr. Stettauer in the name of Mrs. Mary Fuller, to receive the value of certain property he held in trust for her, & which he had several times appropriated—sold for his own—that was what we had him arrested for; for fraudulently appropriating that trust property.

Q. Who was then made her trustee?

A. At her written request, Mr. Stettauer, who then held the house in Washington, as trustee for her, conveyed that house to Buckley as her trustee.

Q. This $10,900 note—is that part of the same transaction?

A. Yes, sir; it was paid over to her in payment of this action against Stettauer to recover the value of her property which had been deposited in his trust for safe-keeping.

Q. At what time did Mrs. Fuller first become possessed of that property in trust, do you know?

A. I think it was in 1868.

Q. Do you know what time in 1868?

A. No, sir; I have no recollection of the month; it seems to me it was the latter part of the year, or fall.

Q. Did I understand you to say there were two pieces of property claimed by her, one in Washington & the other in New York?

A. No, sir; the house in New York was in her individual name; it was given to Stettauer, when they broke up house in New York & went to Washington, in trust for her, in order to sell it & place the money to her credit—her individual credit; he took this house and sold it, and, instead of putting the money to her trust he went & used it in business

694 & every other way he pleased, & when she demanded it from him he refused to give it, and wanted to hold it for the debt of Perry Fuller & Co., which he claimed was due to the firm of which he was a member. We refused to recognize that claim, commenced action in her name, as it was her property, for her individually, against him individually, for wrongfully appropriating this property which was placed in his trust for safe-keeping; at the same she had deposited some stocks. & he also appropriated that money *also*, having sold the stocks.

Q. It was after the termination of this suit that he made that conveyance, then, to Buckley, Sheldon & Co.?

A. Yes, sir; it was made some two & a half weeks after this settlement was made. On going over to Washington I found that deed of trust was in his name as trustee, & I suggested it was somewhat singular that as he had her money she should make him trustee; then I prepared the writing, had it executed before a notary, & handed it to Stettauer; in pursuance of that request the deed was made to Stettauer, & that was the whole transaction.

Cross-examined by Mr. Henderson, counsel for the defendant:

Q. Mr. Stettauer, as the result of that settlement, turned over all the assets he had ever received of Perry Fuller?

A. No, sir; he turned over no assets by simply to Mrs. Fuller the money it was claimed by her was due her in this connection, & then there was another action commenced by Perry Fuller & Co. to settle up the affairs of Stettauer & Co., in which they were interested.

as follows, as I understood them: That Major Fuller was to give an order or promise to Mr. Huntington, that out of a certain sum to be realized from a claim which Mr. Chandler & others had against the Interior Department for damages sustained by a certain seizure, to the amount of the claim which Mr. Huntington said was due the bank from the firm of Perry Fuller & Co. Upon that fact this suit against
691 Mr. Fuller, under which those goods were attached, was, of course, to be discontinued, &, consequently, the amount held here would be released, & would go to Mr. Hays. Then it was proposed something as follows: That, as Mr. Fant had a certain sum of money coming to him for services out of this "hay," claim, as it was called, and as Mr. Coyle was to get something, & as a great many other people in Washington were to get something, they were each to contribute from the sum which they were to receive from this claim in order to make up the difference between $15,000 seized, which was realized from the sale of those goods, & the real value of the goods; that is, as I understand the matter.

Q. What "hay" claim was that?

A. That is the one I referred to as made by Mr. Chandler; it was so called, although it really consisted, really was founded upon seizure made by the rebellion forces down near Cabin Creek, during the war. They took quite a large amount of goods belonging to Chandler and other people, & also burnt a great amount of hay which they had put up there in order to carry out one of the contracts in which Perry Fuller & Co. were interested, & it was always known & distinguished in our conversation as the "hay claim."

Q. You were acting, as you say, as attorney for Mr. Hayes?

A. Yes, sir; & he was acting as attorney for Mr. Fuller. Mr. Voorhies always acted as his attorney.

Q. During these interviews did Mr. Fuller ever lay any claim to those goods that were seized in St. Louis?

A. On the contrary, he always specifically denied, & expressly
692 denied any connection whatever with the matter. Major Fuller denied always any connection whatever with Mr. Hayes, or any interest in those goods.

(Mr. Henderson, def't's counsel, objected.)

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Q. I did not ask about that action.

695 A. Well, I will make it very clear in a few words; that action was finally compromised by a settlement on the books; that settlement showed that Perry Fuller was indebted to Stettauer & Co. $29,000. Fuller agreed to assume $29,000 and a little over, of the outstanding indebtedness of Stettauer, as collateral security; by this arrangement quite a large amount of stock was left in the hands of Stettauer & Co.

Q. What was it?

A. It was some Fort Smith Bank stock, some notes, & some insurance scrip.

Q. What has become of that?

A. It is all in the hands of Stettauer as yet, except the Fort Smith stock, which he told me—I suppose you do not want what he told me?

Q. Well, the balance of the stock was all delivered up?

A. No, sir; there was no stock to be delivered up; as I told you, Mr. Louis Stettauer had received——

Q. Didn't he deliver that Fiber stock?

A. That was months before any settlement was made or talked of; it was at the commencement of the negotiation for a settlement.

Q. He had delivered up all the property that had been delivered to him as a collateral?

A. He turned over some Fiber stock & some other stock.

Q. Did you read that agreement between Stettauer & Perry Fuller?

A. I did, sir; I prepared it.

Q. This property had been deposited with Stettauer, not by Mrs. Fuller, but by Perry Fuller?

A. No, sir; some had been deposited by Mrs. Fuller in her behalf & for her, some by Mr. Fuller at her requested.

696 Q. Mr. Fuller was then good at that time?

A. He was supposed to be worth $800,000 or $1,000,000.

Q. What was the purpose of depositing Mrs. Fuller's property with Mr. Stettauer?

A. They had left New York & were going to Washington. Mr. Stettauer had been very intimate with the family & stood on very close relationship with them, & as they were going away Mr. Fuller had this collateral security—some bank stock—& wished to leave it in a safe place; he went to Mr. Stettauer and showed him a letter from Mrs. Fuller, requesting him to leave this stock for her in Mr. Stettauer's safe, in order that it could be kept perfectly safe while she was away. She did not wish to sell it; it was good paying stock at that time, & so they left it in that safe. Very soon after Mr. Stettauer took it out & sold it, and used the money for himself.

Q. What stock?

A. Some stock in the Merchants' National Bank, at Fort Smith, of Mr. & Mrs. Fuller & some stock of Miss Vinnie Ream's.

Q. There must have been a power of attorney to sell it?

A. Well, I presume there is a blank power of attorney.

Q. Do you know that?

A. No, sir.

Q. Did you get up the papers?

A. Yes, sir; all the papers in these matters.

Q. Will you tell me how Stettauer sold the stock without having a power of attorney?

A. Well, I presume Mrs. Fuller might have signed her name to
697 a blank power of attorney, & Miss Ream, so that it could be sold any time.

Q. Do you intend to say that was issued by Miss Vinnie Ream?

A. No, sir; Major Fuller was one of the parties who was largely interested in that stock, the stock was given to him in his keeping, & he sold some shares to Miss Vinnie Ream; he gave some to his wife, and the rest he kept. Major Fuller signed it on the back of the stock.

Q. When was that made; at the time of the deposit?

A. That was made a long time before the deposit, just as soon as the bank———

Q. Was not this property all deposited with Stettauer as part security?

A. That was a claim made by Mrs. Mary Fuller, & sustained. Mr. Stettauer tried to get release from the order of arrest, and he failed to do it, for the reason that he acknowledged it was right, & paid the amount.

Q. As the result of this settlement?

A. No, sir; as the result of our suit against him, on the part of Mrs. Mary Fuller.

Q. Then you say the stock was originally issued in the name of Perry Fuller?

A. That is my understanding of it, sir.

Q. Do you know what Miss Vinnie Ream gave for her interest?

A. She gave cash.

Q. How much?

A. That I do not know.

Q. How do you know that she gave any cash?

A. Because I have been told so by her & Mr. Fuller, both.

698 Q. That is all you know about it?

A. That is all.

Q. What did Mrs. Fuller give for hers?

A. I do not know, sir, positively; I presume though it was a present.

Q. Is she the sister of Vinnie Ream?

A. Yes, sir.

Q. Did Mrs. Fuller have any property when Perry Fuller married her?

A. Yes, sir; $100,000. Major Fuller made her a present of that amount when he married her.

Q. When did he marry her?

A. In 1866, I think, sir; I was not present, but I have heard it.

Q. Do you know that fact?

A. I do not know, sir, I have only heard it; I was not present at the ceremony.

Q. You do not know whether the money was given?

A. No, sir, but I have heard that from a great many people.

Q. Who did you hear that from?

A. Perry Fuller.

Q. From Mrs. Fuller?

A. I don't think I ever spoke with her on the subject.

Q. That was after you married into the family?

A. No, sir; long before; at the time of this arrangement I had not known my present wife.

Q. What was the house & lot given to Mrs. Fuller for?

A. Simply gave it to her as any man might.

Q. When was that house conveyed to her?

A. In 1867, I think.

Q. 1868, wasn't it?

699 A. I think it was in 1867; I am not positive.

Q. What time was the Washington house given to her?

A. It was bought by her personally; 1869 or 1868, I am not sure which.

Q. The conveyance was made to Perry Fuller?

A. It was, by mistake. The attorney who conveyed the property not recollecting the name, had it made out in the name of Mr. Fuller, & when he came back (he was away at the time) he found the error, and went to the parties & told them that was a mistake, & they said it would make no difference, that he could convey it to Stettauer as trustee for his wife, because, by the laws of the district, a wife could not hold property in her own name. He selected Stettauer because he was very intimate with him, & he made him trustee for his wife.

Q. He conveyed it to Stettauer, then, in trust for his wife?

A. Yes, sir.

Q. When was that?

A. That was in 1869, I guess.

Q. Both of those houses were conveyed to her sometime after he married?

A. Yes, sir.

Q. Then he gave her a very fine residence after that, in addition to the $100,000?

A. No, sir; after they left New York, & had directed the New York house to be sold, she went to Washington with him, & intended occupy this house in Washington, & from the proceeds of the New York house pay for the Washington house.

Q. If Perry, at the time, was perfectly good, what was the use of putting this Washington house, & all the other property in the name of Stettauer?

709 A. Well, at the time this was put in Stettauer's name, Major Fuller & Mr. Stettauer were on the most intimate relations with each other; Mr. Stettauer was constanly visiting there, & he had every confidence in the man, & he wanted to get some trustee for his wife, because his wife could not hold property in her own name, & he turned to Mr. Stettauer & asked him if he would accept the trust, & he said he would, & took it.

Q. Cannot a married woman hold property in New York?

A. Not in the District of Columbia.

Q. Well, but in New York?

A. Yes, sir.

Q. What was the use of putting the New York property in Stettauer's name?

A. He did not put the New York property in Mr. Stettauer's name, & when Mrs. Fuller left New York to go to Washington, she could not be in New York to sell the property, & consequently she put it in Mr. Stettauer's name, in order that he might sell or dispose of the property, & that is the way he did it.

Q. Could not he execute a deed & send it to her?

A. Yes, sir; but some people think it best to do business differently.

Q. Did you advise that course?

A. No, sir.

Q. You were present at the settlement in Washington?

A. Yes, sir.

Q. You did not say anything about that mortgage in East Tennessee, that figured in this matter?

A. O, yes, I did.

Q. Do you remember anything about that?

701 A. Yes, sir; it was assigned to me in trust for my firm.

Q. What was it?

A. It was supposed it would amount to about $10,000.

Q. Why was that assigned to you?

A. In order to pay our firm for services we had rendered Perry Fuller & Co., for several years.

Q. $10,000?

A. It was expected there would be $10,000 realized from it.

Q. Has there been?

A. No, sir; there has never been 10 cents.

Q. Never got anything?

A. No, sir; I have a deed of trust on the land which I will probably be defeated in.

Q. How many acres are there?

A. That I do not know; the land is worth, I presume, if put up in the market to-day, about $3,000; I cannot tell how many acres there are.

Q. It was assigned to your firm by Perry Fuller?

A. No, sir; it was assigned to me individually, in trust for our firm, because it would not be very pleasant to incorporate four names in a deed of trust of that kind; the firm had ample confidence in me; at that time I had no expectation of being the son-in-law of Perry Fuller.

Q. Now you say that this note of $10,900 executed by Stettauer & Co.——

A. No, sir; it was executed by Louis Stettauer, not Stettauer & Co.

Q. I stand corrected; that was turned over; will you tell me under what obligations Mrs. Fuller was to Mr. Hayes after that note finally went to Buckley, Sheldon & Co.?

702 A. Yes, sir; for I was there and advised about that matter. Mr. Fuller came to Mrs. Fuller & told her at the St. Nicholas hotel just the night before she left New York for Washington—this was after this note had been deposited wiih Buckley, Sheldon & Co., & also the cash she realized was deposited there in preference to being put any place else—he told her that Mr. Hayes had been purchasing a large amount of goods there, & Buckley was a little anxious about the cash. I was present at the time, & he says to her "Now Buckley suggests that we may deposit this note here as security for this debt." Mr. Fuller objected to any such protest at first; finally he referred her to me, & I said "This note is not payable until December. Mr. Hayes' obligations are to pay that cash bill in 30 days, (this was early in September,) and Mr. Buckley will have been paid his cash & your note will be released long before it becomes due; but, even presuming Hayes will not turn his goods over as rapidly as he expects, in four months this cash payment will be made, & your note will come back to you again;" & after speaking to her a few minutes she wrote that letter.

Q. You prepared that letter?

A. No, sir; I suggested some of it, the form of it, & she wrote it off herself. Mr. Buckley testified he tore it up.

Q. Very lengthy, wasn't it?

A. No, sir; not particularly lengthy; she showed it to me.

Q. You spent most of the fall of 1869 at Ottawa?

A. No, sir.

Q. About a month?

A. Yes, sir.

Q. Was Mr. Fuller's family there?

703 A. No, sir.

Q. Was Mr. Fuller there himself?

A. No, sir. The fall of '69 Major Fuller, when I got there, I think was there with his little son; they were there at the time, but Major Fuller was in New Orleans most of the time, & in Missouri; that was in the fall of '69. Mrs. Fuller was speaking about this; her son had been visiting them, he had been living there for several years carrying on business as a banker, the book-keeper of a banking-house.

Q. Did he have any interest in the bank?

A. I am not aware of that, sir,

Q. You say you spent about a month there in the fall of 1869?

A. About 4 weeks, I judge.

Q. Was Hayes there then?

A. Hayes was there part of the time. I went there at Hayes' invitation.

Q. You were here at the time the goods were seized?

A. No, sir; I was here after they were seized.

Q. How long after?

A. I should judge 4 or 5 days; it was in that neighborhood.

Q. How did you happen to come?

A. I was telegraphed to come, by Mr. Hayes.

Q. Were you attorney for Hayes?

A. Yes, sir.

Q. Where was his dispatch sent from?

A. From Fairport to my office in New York. I had gone to Washington & it was forwarded to me from New York to Washington. In accordance with that telegram I came to St. Louis.

704 Q. Where were you at Washington?

A. Stopping at Major Fuller's house.

Q. What date did you go to Washington?

A. In August; I have no recollection; I reached here about the 12th I think.

Q. Did you go down with Major Fuller?

A. I do not recollect whether I went down the same night or the night afterwards. I went about the same time for the purpose of going, to Tennessee to settle this deed of trust matter, & I stopped over at Washington on my way to Tennessee, (that was the only way to get there,) & met Major Fuller at the cross-line.

Q. How did you happen to meet there?

A. Well, he came on the train & I met him there.

Q. You stopped there?

A. No, sir; I was delayed by an accident on the road for 24 hours, on account of this accident.

Q. Did you have any conversation with Major Fuller about the seizure of these goods before you left Washington?

A. I had a conversation. I thought if he was acquainted with anybody in St. Louis it was his duty to come & help Hayes, as Hayes got into the trouble on Fuller's account. He came. Before this time the goods had been seized in New York & I had gone from Washington to New York & found out all about the seizure. The First National Bank had attached Hayes' goods for a certain claim which they held against Perry Fuller, & when I received the dispatch announcing the seizure of Hayes' goods at St. Louis, I told Mr. Fuller, "Now Mr. Hayes has got into this trouble & it is your duty to help him out of it if you can, & if you know anybody in St. Louis you should help him to replevin

705 those goods." Says I "you are acquainted & Mr. Hayes is a total stranger, & you ought to help him."

Q. It was then a labor of love?

A. No, sir; about this time, Major Fuller had intended to start a week later, in order to visit his son in Ottawa, Kansas, & put his two daughters at school in Columbia, in this State, & I told him he had better go away before he expected, & try & help Hayes, if he could; he was going any way, & I told him he had better go a week earlier.

Q. He was going to Ottawa to live?

A. No, sir; to visit his son.

Q. How long did he expect to remain?

A. Three or four weeks.

Q. How long after did he remove to the Indian Nation?

A. I don't know exactly, how long.

Q. How long did he stay there?

A. Not over 6 weeks, altogether.

Q. Where was he?

A. In the Cherokee Nation, about 4 miles south of the State line, Kansas.

Q. Did his family stay there with him?

A. His family remained at nearly all the time; his two daughters went to school to Columbia, Mo.; I took the other daughter home with me; his daughter was married to Governor Elder of that State, & he had made Ottawa his home for a number of years.

Q. You say that in this settlement at Washington, your understanding was, that Fant, Coyle & others, were to contribute——?

A. I said Mr. Coyle was to receive some money out of the hay claim, if it was paid, for his running around. Mr. Fant was to receive
706 some $600—I believe he has received—for some services, & several other parties were to receive other sums for other services. Fant & Coyle both told me they wanted this money badly, & they said "Now we will let any part of it go, if we can only get this settlement with Huntingdon, because, if Huntingdon is paid what Fuller & Co. owe him, then he won't press this matter in the Department, & when he goes to the Secretary & tells him not to press that thing, it won't be pressed;" that is what he said. & he says, "Now, in order to have that matter fixed, & have Mr. Huntingdon satisfied, we will all contribute from the amount which we expect to receive from this claim, & so make up the difference between the value of the goods as sold—$15,000, I think it was—& the actual invoice value." When they approached me on the subject, I told them that I would make no settlement without Hayes. He expressly instructed me to make no settlement, unless he got the actual invoice value of the goods, with interest up to the time.

Q. This was done by Coyle & Fant?

A. No, sir; not them alone, but several others; E. *M.* Stanton, son of the Ex-Secretary of *State*, & I think, Judge Johnson, at Washington, an attorney; there is a lot of them there.

Q. They were paying this debt?

A. They were to make up as much as the difference would come to, but when they came to figure it up, it was found that the whole amount they would receive from this thing would not amount to much more than 8 or 10 thousand dollars, & consequently, they could not afford to pay the difference, & that is the reason that settlement fell through.

Q. It did not fall through, because you would not give up
707 the Tennessee mortgage?

A. No, sir; on the contrary, I told Mr. Fuller, if he helped Huntingdon out of his difficulty, I would give up the deed of trust, & I was assured that any arrangement I would make with Mr. Fuller,

would be stood by. Mr. Fuller assured me if this hay claim was paid, that out of that hay claim he would pay over from their charges; & consequently, if I gave up the deed of trust, I simply gave up his deed of trust, & took his word of honor for it, to pay.

Q. Are you the administrator of Perry Fuller?

A. I am virtually, but not in law.

Q. But you did take out letters of administration?

A. After his death, the family decided I should settle it up, & I was taken sick, & was hardly out of my bed, except to go to Kansas; & since I have been here, I have not been able to attend to anything of the kind.

Q. Did you take out any letters of administration?

A. No, sir.

Q. Did you file an application?

A. I did, sir, in New York.

Q. Is there any arrangement with Hayes, that the proceeds of this suit should go to you?

A. Not one cent.

Q. Do you expect, if this suit should *should* go favorably, to get back what Perry Fuller deposited with Buckley, Sheldon & Co?

A. No, sir; if this suit is settled, Hayes would be only enabled to pay $20,000 of his indebtedness; because this bank has seized
708 the goods, & until the whole debt is paid I won't get back a cent of it.

Q. If the proceeds of this suit, will pay Buckley, Sheldon & Co., then you get, of course, the deposits there?

A. No, sir; Mrs. Fuller gets them.

Q. You are the son-in-law of Mrs. Fuller?

A. No, sir; I am not her son-in-law.

By Mr. BROADHEAD. Mrs. Fuller is the second wife of Mr. Fuller?

A. Yes, sir.

Q. How long had your firm been doing business with Major Fuller?

A. For Mr. Fuller, & Fuller & Co., for about four years, sir.

And this was all the evidence advanced in the cause, and thereupon, the court gave the jury the following charge, as to the law:

Judge Dillon's charge to the jury.

In the U. S. circuit court, districts of Missouri, October T., 1871.

STATE OF MISSOURI, FOR USE OF WILLIAM HAYES,
vs.
GEO. H. REA & E. D. JONES.

Charge of court.

GENTLEMEN OF THE JURY: I. On the 2d day of September, 1869, the First National Bank of Washington, D. C., commenced a suit by attachment in this county against one Perry Fuller, on an alleged debt of about $10,000, & a writ of attachment, issued in the case, was levied upon certain goods & merchandize on their way to Ottowa, Kansas.

On the 16th day of the same September, under a local statute
709 of the State, the plaintiff in this suit, to wit, William Hayes, made to the sheriff, who had levied on the said goods, a claim in writing, verified by his affidavit, describing the property, & stating

that his interest therein was a full & entire ownership thereof, & denying that Perry Fuller had any right or title, directly or indirectly, to the said property, or any part thereof.

Thereupon, under the local statute above mentioned, on the 20th day of September, the defendants in this suit, as the sureties of the First National Bank of Washington, which had attached the goods, executed a bond to the State of Missouri in the penal sum of $50,000, conditioned that they, the said Rea & Jones "shall pay to and satisfy said claimant [William Hayes] all damages which he may sustain in consequence of the aforesaid seizure & sale of the goods" by the sheriff.

The statute under which the bond in suit was given provides that "if the claimant shall be injured or damaged in consequence of any levy or sale under attachment, and shall, in good faith, be the owner of the interest claimed by him in the property, he may bring a civil action on such bond in the name of the State to his own use "to recover his damages." Now the present action is brought upon this bond by the plaintiff, William Hayes, and he claims that the goods seized under the attachment against Fuller were the plaintiff's & not Fuller's, and he claims that Fuller had no interest therein, and that he (the plaintiff) is entitled to recover the value from the defendants. On the other hand, the defendants claim that Fuller either owned the goods or had an interest therein, & if so, they were subject to the attachment.

710 This is the form of the action; but it is substantially a controversy between the plaintiff, Hayes, and the First National Bank of Washington, as to the right of the bank to attach the goods as the property of Perry Fuller.

II. This makes it proper & necessary for the court to call your attention to the law relating to what on the one side would, and, conversely, what on the other side would not, authorize The First National Bank, at Washington, to levy upon or attach the goods in question as the property of Perry Fuller.

From necessity the testimony in the case has taken a very wide range, and your attention has been directed by the one side or the other to numerous transactions and a multitude of circumstances. But, as not unfrequently happens, although the testimony is voluminous, the issues to which it relates & upon which it is supposed to have a bearing & to throw light, are few & plain, & to these we will now advert.

That issne in this case is simply this: Was Hayes, the plaintiff, the sole owner of the goods levied upon by the bank as Fuller's? which is the plaintiff's claim; or, was the said Fuller the sole owner, or if not the sole owner, had he joint interest in them as the secret copartner of Hayes or otherwise which is the defendant's theory.

Now, if you find from the evidence that Hayes was the sole owner of the goods, & that Fuller had no interest or right of property therein, then the bank had no right to levy its attachment upon them, & the defendants are liable to the plaintiff for his damages.

711 But if you find from the evidence that Fuller owned the property attached, or was a copartner, though a secret copartner, with Hayes in respect to said goods, or had a joint interest in them, then, in either case, the bank had a right to attach the goods, & the defendants are not liable in this action; and in this action are not liable, although Hayes, as between himself & Fuller, may have had a joint interest with Fuller in the goods.

III. The fact in this case seems to be that the goods in question were purchased in New York, in August, 1869, & were purchased in the name of and billed to Hayes, who gave his own notes for the same, and that

some of these notes were indorsed by Fuller. Prima facie, therefore, the goods would be Hayes'. But the bank claims that, although the goods were thus purchased ostensibly or apparently in the name of Hayes, yet that it was in pursuance of a secret agreement or understanding between Hayes & Fuller, to the effect that Hayes should buy in his own name, but for Fuller's benefit & use, or for the joint use & benefit of Hayes & Fuller, & that the motive or inducement for this arrangement or understanding was that Fuller was in embarrassed circumstances, or was apprehensive of trouble if his name was known in the purchase. In other words, the bank claims that there was a fraudulent scheme between Fuller & Hayes, by which goods were to be purchased in Hayes' name, but in secret trust for the use & benefit of Fuller wholly, or in part; and it is to establish this or to refute it, that the larger amount of the testimony which you have heard has been directed.

It is not the intention of the court to recapitulate the evidence,
712 & it is deemed only necessary to call your attention to a few principles of law applicable to your consideration of it in connection with this claim of fraud.

And the first is that this alleged fraudulent scheme may be established by circumstances, if these, in the opinion of the jury upon the whole evidence, satisfy the minds & judgments of the jury of its existence. The law does not require fraud, which is usually contrived in secret, to be established by express or positive testimony, nor does it require it to be proved beyond all reasonable doubt; but it allows it to be established by circumstantial evidence. But such evidence, while it need not remove all doubt, should, upon the whole, satisfy the jury, as men of business and experience, that the alleged fraud existed.

In determining this question of the existence of a fraudulent scheme between Hayes & Fuller to buy goods in Hayes' name for Fuller's benefit, the court has admitted not only the acts, conduct, & declarations of Hayes bearing upon it, but also certain declarations or statements made by Fuller not in the presence of Hays.

You cannot consider, and should not, declarations & statements of Fuller made in the absence of Hayes and never assented to by him, to establish the fact of a fraudulent scheme, but such a scheme must be established to your satisfaction by evidence other than such declarations, but if proved to your satisfaction by other evidence than declarations & statements made by Fuller in reference to the purchase of the goods & their purpose & designs, are competent testimony to be considered by the jury, although not made in the presence of Hayes.

IV. You are the sole judges of the weight of evidence &
713 credibility of the witnesses, & of each of them.

V. If you find for the plaintiff, the measure of damages is, under the evidence, the value of the goods attached, with interest. This value you determine from the evidence. You are not concluded on this point either by what were paid for the goods, nor by what they sold for. Hayes stated their value to be $20,465 75. They sold by the sheriff for $15,807 34.

VI. The case is one which is peculiarly fitted for the determination by a jury. It involves a consideration of the motives which actuate men, the existence & operation of which are sought to be shown by the circumstances which surround them. The inquiry which you have to make is *a* plain, clear, & distinct; it is embarrassed by no technical consideration, but is to be decided by the jury as men of business & experience, using in its determination their common sense & every-day judgment, & returning a verdict upon the issue above defined according

to the very truth as it rests in their convictions & conscience, irrespective of who are the parties or the consequences of your finding.

For the court:

JNO. F. DILLON,
Circuit Judge.

The jury having failed to agree on their verdict, the court gave them the following additional charge, to wit:

Additional charge by Judge Treat.

TREAT, J.

If the property in question was bought and shipped solely in the name of Hayes, then the jury should find the ownership to be
714 exclusively his, unless the defendants have proved that, notwithstanding such purchase and shipment, the fact really is that the ostensible and apparent ownership of Hayes was to cover up and conceal a proprietary interest of Fuller in the goods. In other words, the possession of the goods by Hayes, the same having been bought and shipped solely in his name, throws upon the defendants the burthen of proving that Fuller had a property-interest therein, or was part owner thereof.

The defendants, in proving a secret or other agreement or understanding between Hayes and Fuller as to ownership of these goods, must first establish that fact by competent evidence, independent of any declarations or statements by Fuller in the absence of Hayes. In order to prove such understanding, the defendants cannot resort to such declarations or statements by Fuller. Hence, discarding from your minds on that branch of the inquiry all statements made by Fuller in the absence of Hayes, you should first determine whether such an understanding existed. If it did not exist, or is not proved by testimony independent of such statements by Fuller, then the jury cannot consider such statements by Fuller as any evidence whatever in this case.

If satisfied by such independent evidence that such an understanding existed, then Fuller's declarations are competent testimony, and not otherwise.

It is immaterial, as to the ownership of the goods, how Hayes acquired his means, or whether his exhibit of his means was correct or not, if he actually bought the goods solely for himself. The
715 merchants of whom he bought, if the purchase was based on false representations, had their legal redress; but the defendants cannot impair the title on such grounds. That testimony it is proper for the jury to consider in reference to the credibility of Hayes as a witness, and also as tending to show what connection, if any, Hayes had at the time with Fuller; and so with respect to the manner in which he acquired his means or credit.

If he wronged the Government, or violated his official obligations, or procured an unfair advantage in his settlement with Fuller & Co., or McDonald and Fuller, this is not the case in which he is to be tried for such alleged misconduct. This is a simple question as to the ownership of the goods in controversy, and not as to other or outside questions, and such questions have nothing to do with the merits of this case further than they affect the credibility of witnesses, or throw light upon the alleged understanding between Hayes and Fuller as to their ownership of this property.

Exceptions of defendants' counsel to Judge Treat's charge.

Thereupon the defendants excepted to the following portion of said charge, to wit: "It is immaterial, as to the ownership of the goods, how Hays acquired his means, or whether his exhibit of his means was correct or not, if he actually bought the goods solely for himself. The merchants of whom he bought, if the purchase was based on false representations, had their legal redress; but the defendants cannot impair the title on such grounds," for the reasons—

1st. That said charge, or so much of it, is against the law.

2nd. It is calculated to mislead the jury.

3rd. It gives undue prominence to the facts on one side of the case.

716 4th. It assumes, as proved, facts which can only be found by the jury.

Defendants also excepted to the following portions of said charge, to wit:

"If the property in question was bought and shipped solely in the name of Hays, then the jury should find the ownership to be exclusively his, unless the defendants have proved that, notwithstanding such purchase and shipment, the fact really is that the ostensable and apparent ownership of Hays was to cover up and conceal a proprietary interest of Fuller in the goods. In other words, the possession of the goods by Hays, the same having been bought and shipped solely in his name, throws upon the defendants the burthen of proving that Fuller had a property-interest therein, or was part owner thereof," on the grounds—

1st. That it is erroneous, and against the law in the case.

2nd. It assumes, as proved, what is alone for the finding of the jury.

3rd. It is based on only a part of the evidence in the case, and is calculated to mislead the jury.

And the defendants excepted to so much of said charge as reads as follows, to wit:

"The defendants, in proving a secret or other agreement or understanding between Hays and Fuller as to ownership of these goods, must first establish that fact by competent evidence, independent of any declarations or statements by Fuller in the absence of Hays," because—

1st. It is erroneous, and against the law in the case.

2nd. It submits to the jury to determine what is competent evidence to prove a fact.

717 3rd. It is calculated to mislead the jury.

And defendants excepted to so much of said charge as reads as follows, to wit:

"In order to prove such understanding the defendants cannot resort to such declarations or statements by Fuller. Hence, discarding from your minds on that branch of inquiry all statements made by Fuller in the absence of Hays, you should first determine whether such an understanding existed. If it did not exist or is not proved by testimony independent of such statements by Fuller, then the jury cannot consider such statements by Fuller as any evidence whatever in this case. If satisfied by such independent evidence that such an understanding existed, then Fuller's declarations are competent testimony and not otherwise," for the following reasons—

1st. It is erroneous and against the law in the case.

2nd. It is based on a part of the evidence only, and is calculated to mislead the jury.

And defendants also excepted to so much of said charge as reads as follows, to wit:

"If he wronged the Government or violated his official obligations or procured an unfair advantage in his settlement with Fuller & Co., or McDonald or Fuller, this is not the case in which he is to be tried for such alleged misconduct. This is a simple question as to the ownership of the goods in controversy, and not as to other or outside questions, and such questions have nothing to do with the merits of this case further than they effect the credibility of witnesses, or throw light upon the alleged understanding between Hays and Fuller as to
718 their ownership of the property," for the reasons:

1st. It is erroneous in law.

2nd. It gives undue prominence to certain facts in the case.

3rd. It comments on the evidence, and removes from consideration evidence proper to be considered in making their verdict by the jury.

4th. It is calculated to mislead the jury.

5th. It restricts the province of the jury to a part of the case only.

6th. It is suggestive of the opinion of the court on the facts of the case.

And the defendants excepted to the whole of said second charge, and each and every part thereof, for the reasons:

1st. That it is inconsistent with the former charge.

2d. It restricts the jury to the consideration of a part only of the facts in the case in forming their verdict.

3rd. It is calculated to mislead the jury and—

4th. It is against the law in the case.

Exceptions overruled by the court.

All of which said several exceptions to the said several portions of said charge and to the whole of said charge named were by the court overruled; to which rulings of the court the defendants saved their exceptions at the time.

And thereupon the jury returned into the court the following verdict:

Verdict.

STATE OF MISSOURI, EX REL., WILLIAM HAYES,
vs.
GEORGE H. REA AND E. D. JONES. } Debt.

We, the jury, find for the plaintiff, and assess the damages at twenty-three thousand one hundred & twenty-seven $\frac{25}{100}$ dollars ($23,127 27)

JAMES M. BRAWNER,
Foreman.

719 *Motion for a new trial.*

Thereupon the defendants filed their motion for a new trial, as follows:

(Copied on page 31 of this transcript.)

Overruled by the court.

Which, being considered by the court, was by the court overruled; to which ruling defendants saved their exceptions.

And thereupon judgment was entered on said verdict for the plaintiff; and the defendants tender this their bill of exceptions, which they pray may be signed, sealed, and made a part of the record; which is done accordingly.

SAMUEL TREAT, *Judge.* [SEAL.]

720

721 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Circuit Court for the Districts of Missouri, ss:

I, Austin Drake, clerk of the circuit court of the United States in and for the districts of Missouri, to hereby certify the writing hereto annexed to be a transcript of the record and proceedings in case of The State of Missouri in the relation and to the use of William Hayes, plaintiff, against George H. Rea and Edward D. Jones, defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name, and affix the seal of said court at office in the city of St. Louis, in said districts, this second day of December, in the year of our Lord eighteen hundred and seventy-one.

[SEAL.] AUSTIN DRAKE,
Clerk of said Court.

722 (Indorsed:) United States circuit court districts of Missouri. The State of Missouri, in the relation and to the use of William Hayes against George H. Rea and Edward D. Jones. Duly certified transcript of the record and proceedings in the above-entitled cause.

723 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the circuit court of the United States for the districts of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the October term of said court, A. D. 1871, between The State of Missouri in the relation and to the use of William Hayes, plaintiff, and George H. Rea and Edward D. Jones, defendants, a manifest error hath happened, to the great damage of the said George H. Rea and Edward D. Jones, defendants as aforesaid, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this first day of November, in the year of our Lord one thousand eight hundred and seventy-one.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the districts of Missouri, dated as aforesaid.

AUSTIN DRAKE,
Clerk C. C. U. S. Missouri Districts.

Allowed by—

SAMUEL TREAT, *Judge.*

724 UNITED STATES OF AMERICA,
Districts of Missouri, ss:

In obedience to the within writ of error, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case.

Witness my hand at office in the city of St. Louis, Missouri, this 2d day of December, A. D. 1871.

AUSTIN DRAKE,
Clerk of the U. S. Circuit Court
for the Districts of Missouri.

(Indorsed:) State of Missouri, to the use of William Hayes, vs. Geo. H. Rea et al. Writ of error.

725 The United States of America to William Hayes, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error, filed in clerk's office of the circuit court of the United States for the districts of Missouri, wherein Edward D. Jones and George H. Rea are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Treat, one of the judges of the circuit court of the United States for the districts of Missouri, this first day of November, in the year of our Lord one thousand eight hundred and seventy-one.

SAMUEL TREAT.

ST. LOUIS, *Nov.* 1*st*, 1871.

Service on the above citation acknowledged this day.

W'M HAYS,
By SHARP & BROADHEAD, *Att'ys.*

726 (Indorsed:) State of Missouri, to use of W'm Hayes, vs. Geo. H. Rea et al. Citation.

(Indorsment on cover:) No. 534. George H. Rea and Edward D. Jones, plaintiffs in error, vs. The State of Missouri, ex rel. and to the use of William Hayes. Missouri C. C. U. S. Filed 14th December, 1871.

UNITED STATES SUPREME COURT.

In Error to the Circuit Court of the United States for the District of Mo.

GEORGE H. RHEA
and
EDWARD D. JONES,
Plaintiffs in Error,

vs.

THE STATE OF MISSOURI,
Ex rel. and to the use of
WILLIAM HAYS.

Statement and Brief of Defendants in Error.

SHARP & BROADHEAD, Attorneys.

GEORGE H. RHEA and EDWARD D. JONES, Plaintiffs in Error, vs. THE STATE OF MISSOURI, *ex. rel.* and to the use of WILLIAM HAYS.	UNITED STATES SUPREME COURT. In Error to the Circuit Court of the United States for the District of Missouri.

STATEMENT AND BRIEF OF DEFENDANTS IN ERROR.

SHARP & BROADHEAD, Attorneys.

On the 2d of September, 1869, the First National Bank of Washington, D. C., commenced a suit by attachment, in St. Louis county, Missouri, in the Circuit Court of that county, against Perry Fuller, on an alleged debt of about $10,000. A writ of attachment issued in the case was levied on certain goods and merchandise on their way to Ottawa, Kansas.

On the 16th day of September, under a local statute of the State of Missouri, William Hays, to whose use this suit is brought, made to the Sheriff of St. Louis County, who had levied on the goods under the writ of attachment, a claim in writing, verified by his affidavit, describing the property, and stating that his interest therein was a full and entire ownership thereof, and denying that Perry Fuller had any right or title, directly or indirectly, to the said property, or any part thereof.

Thereupon, under the provisions of the local statute above mentioned, on the 20th day of September, 1869, the defendants in this suit, Rhea and Jones—plaintiffs

in error here—as the sureties of the First National Bank of Washington, which had attached the goods, executed a bond to the State of Missouri in the penal sum of $50,000, conditioned that they, the said Rhea and Jones, "shall pay to and satisfy said claimant, William Hays, all damages which he may sustain in consequence of the aforesaid seizure and sale of the goods by the Sheriff."

The statute under which the bond in suit was given, provides that "if the claimant shall be injured or damaged in consequence of any levy or sale under the attachment, and shall in good faith be the owner of the interest claimed by him in the property, he may bring a civil action on such bond, in the name of the State, to his own use, to recover his damages."

The action in this case is brought on this bond by the State of Missouri, to the use of William Hays, who claims that the goods seized under the attachment were his and not Fuller's, and that Fuller had no interest in them. And the plaintiff asks to recover the value of the goods from the defendants, the goods having been sold by the Sheriff under the attachment.

The defendants, on the other hand, claimed that the goods attached were owned by Perry Fuller, or that he had an interest in them, and that they were, therefore, subject to the attachment.

The action in this case is in form an action of debt, to which the defendants pleaded *nil debet.*

The case was tried by a jury in the court below, and the jury brought in a verdict against the defendants for the sum of $23,127 27, and the judgment of the court was rendered accordingly.

The case is brought here by writ of error.

It appears from the testimony in the case, that the goods in question were purchased in New York, in Au-

ust, 1869, by Hays, and billed in his name; they were purchased from several different houses, and Hays gave his notes for them, and that some of the notes were endorsed by Fuller. The bank claims that although the goods were purchased in the name of Hays, that it was in pursuance of a secret agreement or understanding between Hays and Fuller, to the effect that Hays should buy in his own name, but for Fuller's benefit or use, or for the joint use and benefit of Hays and Fuller, the inducement being that Fuller was in embarrassed circumstances. In other words, the defendants claim that there was a fraudulent scheme between Fuller and Hays, by which the goods were to be purchased in Hays' name, but in secret trust for the use and benefit of Fuller, or of Fuller and Hays.

On this point there was a large amount of testimony introduced by the defendants, of a circumstantial character, touching the acts, conduct and declarations of Hays; and also certain statements made by *Fuller, not in the presence of Hays.*

The case is one peculiarly fitted for the determination of a jury, and no fault is found with the jury on account of any misconduct, or of having found against the evidence, or the weight of evidence, so that there was no necessity to encumber the record with the testimony of the witnesses. The charge on the part of the defendants is one of a conspiracy or scheme to defraud, and a large mass of testimony was introduced by them on that point, and by the plaintiff, Hays, to show that the purchase of the goods was a fair, *bona fide* business transaction; and amongst the rest Hays read in evidence the deposition of Fuller to the effect that he had no interest in the purchase of the goods, and that he never had any agreement or understanding with Hays whereby he was to receive any profits from the business with Hays or any interest in the goods, and that he never made any such admissions in conversation with any one;

and also the depositions of the merchants in New York from whom the goods were bought, showing that they knew no one but Hays in the transaction.

The defendants introduced the testimony of several witnesses who undertook to detail conversations between themselves and Fuller which took place in the absence of Hays, which the plaintiff *objected* to as hearsay testimony, he not being present, and Fuller not being a party to the suit. The court admitted the testimony; but when it was so admitted, inthe course of the trial, the court at the time told the jury "that unless they found that Hays and Fuller were partners, then whatever Mr. Fuller may have said in the absence of Hays" was not to be taken against Hays, the plaintiff in this suit. See page 245, printed record. And in charging the jury, Judge Dillon, who gave the first charge to the jury, stated to them:

"That they could not consider, and should not, declarations and statements of Fuller made in the absence of Hays, and never assented to by him, to establish the fact of a *fraudulent scheme*, but such a scheme must be established to their satisfaction by evidence other than such declarations; but if proved to their satisfaction by other evidence than declarations and statements made by Fuller in reference to the purchase of the goods and their purpose and design, they were competent to be considered by the jury, although not made in the presence of Hays."

The jury having been out some time, and having failed to agree on their verdict, Judge Treat gave them an additional charge, and it is to certain portions of this latter charge that the defendants excepted, and those exceptions present the only questions which are submitted for the consideration of the court.

The portions of Judge Treat's charge excepted to are as follows, viz:

1. "It is immaterial to the ownership of the goods how Hays acquired his means, or whether his exhibit of his means was correct or not, if he actually bought the goods for himself. The merchants of whom he bought, if the purchase was based on false representations, had their legal redress; but the defendants cannot impair the title on such grounds."

2. "If the property in question was bought and shipped solely in the name of Hays, then the jury should find the ownership to be exclusively his, unless the defendants have proved that, notwithstanding such purchase and shipment, the fact really is that the ostensible and apparent ownership of Hays was to cover up and conceal a proprietary interest of Fuller in the goods. In other words, the possession of the goods by Hays, the same having been bought and shipped solely in his name, throws upon the defendants the burthen of proving that Fuller had a property interest therein, or was part owner thereof."

3. "The defendants, in proving a secret or other agreement or understanding between Hays and Fuller as to ownership of these goods, must first establish that fact by competent evidence, independent of any declarations or statements of Fuller in the absence of Hays."

4. "In order to prove such understanding, the defendants cannot resort to such declarations or statements by Fuller. Hence, discarding from your minds, on that branch of inquiry, all statements made by Fuller in the absence of Hays, you should first determine whether such an understanding existed. If it did not exist, or is not proved by testimony, independent of such statements by Fuller, then the jury cannot consider such statements by Fuller as any evidence whatever in this cause. If satisfied by such independent evidence that such an understanding existed, then Fuller's declarations are competent testimony, and not otherwise."

5. "If he wronged the Government, or violated his official obligations, or procured an unfair advantage in his settlement with Fuller & Co., or McDonald & Fuller, this is not the case in which he is tried for such alleged misconduct. This is a simple question as to the ownership of the goods in controversy, and not as to other or outside questions, and such questions have nothing to do with the merits of this case, further than they affect the credibility of witnesses, or throw light upon the alleged understanding between Hays and Fuller as to their ownership of the property."

It may be stated here, that these transactions with the Government and with McDonald & Fuller, on the part of Hays, took place in 1866, three years before those goods were purchased, and were examined into, merely for the purpose of ascertaining the sources from which Hays got his money and means to carry on business in his own name. Hays, having claimed in his testimony that Fuller & Co., and McDonald & Fuller, were indebted to him for services rendered them in their contracts with the Government in 1866, and that they had paid him certain amounts on that account. And the defendants in this suit claiming that there was no such indebtedness upon a fair settlement with those firms, and that Hays had no means, derived from that source, to go into business with; all of which will appear from the cross-examination of Hays, as it is found in the Record, from p. 53 to p. 71, inclusive.

It is not known what particular points the plaintiffs in error design to press upon the consideration of the Court, but from the exceptions, as preserved, they seem to present only one point, and that is that the Court erred in telling the jury that they could not consider the declarations and statements of Fuller, unless they first found, from facts or circumstances outside of those statements and declarations, that a fraudulent scheme or conspiracy between Hays and Fuller had been formed; and yet

this instruction of the Court seems to embrace so plain a proposition of law, that we may be wrong in supposing that the plaintiffs in error intend to urge it as a ground of error.

Fuller is not a party to this suit, and his declarations, if he even made them, are clearly hearsay testimony.

In Mima Queen vs. Hepburn, 7 Cranch, p. 295, C. J. Marshall says: "One of the rules of evidence is that hearsay testimony is, in its own nature, inadmissible; that this species of testimony supposes some better testimony which might be adduced in the particular case, is not the sole ground for its exclusion, its intrinsic weakness, its incompetency to satisfy the mind of the existence of the fact, and the frauds which might be practiced under its cover, combine to support the rule that hearsay evidence is totally inadmissible."

And Greenleaf says: "It is indispensable as a test of truth, and the proper administration of justice, that every living witness should, if possible, be subjected to the ordeal of a cross-examination, that it may appear what were his powers of perception, his opportunities for observation, his attentiveness in observing, the strength of his recollection, and his disposition to speak the truth."

1 Greenleaf Ev., p. 128, §98.

Of course there are exceptions to this rule; when the testimony, which otherwise would be hearsay, owing to the peculiar relations of the parties, becomes original evidence, and the declarations of one of two conspirators, though not under oath, and made in the absence of the other, is one of those exceptions; but the conspiracy must first be established by competent testimony, and hearsay testimony is not competent testimony.

In case of conspiracy, a foundation must first be laid, by proof sufficient, in the opinion of the Judge, to establish *prima facie* the fact of the conspiracy between the

parties, or proper to be laid before the jury as tending to establish such fact.

1 Greenleaf, §3, p. 141.

Sometimes, for the sake of convenience, the acts or declarations of one are admitted in evidence before sufficient proof is given of the conspiracy; the prosecutor undertaking to furnish such proof in a subsequent stage of the case, but this rests in the discretion of the Judge, and is not permitted except under particular and urgent circumstances; lest the jury should be misled to infer the fact itself of the conspiracy from the declarations of strangers. Ibid, p. 142.

The acts and declarations of individual defendants ought not to have been admitted in evidence to charge other defendants not then present, the allegation of a consp racy not having been sustained by the proof.

Carpenter vs. Shelden, 5 Sanford, p. 96.

Commonwealth vs. Crowninchiel, 10 Pinckney, 498.

These principles of the law of evidence are too plain and well established to require authorities to support them.

But it is claimed that the declarations of Fuller, having once been admitted by the court, they thereby become competent testimony, and ought not to be taken from the consideration of the jury in making up their verdict. Such a construction would, in all cases, give to the court the power to determine absolutely the *fact* of a conspiracy.

The declarations of third parties, not under oath, become evidence against the party to the suit only upon the idea that the party making them is a co-conspirator, that the two are united in a common fraudulent scheme, and if, therefore, they are admitted as competent testimony for all purposes in the case, and not to be excluded from the consideration of the jury, it is because the fact

of conspiracy has been proven. And yet the court may admit them upon *prima facie* evidence only—and sometimes, in its discretion, without even *prima facie* evidence—and yet upon this reasoning it becomes conclusive to establish the *fact* of conspiracy; in other words, *prima facie* evidence becomes conclusive evidence, and establishes a fact which the court had only *presumed* to be true—that is, the fact of conspiracy.

The first exception of the defendants to the charge of Judge Treat, embraces only a portion of this charge on that branch of the case to which the charge related, and is not fair and just, because what immediately follows qualifies, very materially, what is embraced in the exceptions, and, indeed, qualifies every thing said in the charge on that subject; and yet it is the only portion of the whole charge which the defendants have omitted in their exceptions. It is as follows:

"That testimony (that is, the testimony as to how Hays acquired his means, or whether his exhibit of means was correct or not) it is proper for the jury to consider in reference to the credibility of Hays as a witness, and also as tending to show what connexion, if any, Hays had at the time with Fuller, and so with respect to the manner in which he acquired his means or credit."

After the defendants had spent a day of the trial in endeavoring to prove that Hays had no means to buy goods with, and that his exhibit of his means was not correct, it was very natural for the plaintiff to ask, and for the court to instruct the jury, that, so far as the main issue, the ownership of the goods was concerned, it proved nothing, but that it was proper for the jury to consider it as bearing upon the credibility of Hays as a witness, and as tending to show what connection, if any, Hays had with Fuller.

The whole charge of the court, when analyzed and abbreviated, is simply this:

1. That if Hays bought and shipped the goods in his own name, then *prima facie* they are his, and the burden of proving a property interest in Fuller is on the defendants.

2. That the alleged secret understanding between Hays and Fuller, as to the ownership of the goods, can not be established by the declarations of Fuller, made in the absence of Hays, but that such declarations are competent against Hays after the secret understanding is established by other testimony to the satisfaction of the jury.

3. That the testimony as to how Hays acquired his means, whether his exhibit to the merchants of his means was correct or not, whether he took an unfair advantage in his settlements with Fuller & Co., or McDonald & Fuller, is immaterial as to the ownership of the goods, but competent and proper to be considered by the jury as affecting the credibility of Hays, and as tending to show what connection there was between Hays and Fuller at the time of the transactions to which this testimony is directed.

What is there in any one of these charges that does not embrace a correct proposition of law? If any one has a right to complain it is the plaintiff, because in the latter part of the charge the Judge gives too much prominence to the transactions of plaintiff with Fuller & Co., and McDonald & Fuller; for it is not pretended that plaintiff obtained any advantage in any of his dealings with those firms, but he claimed that they owed him money for services rendered, and had paid him certain sums of money, and that he had loaned money to Fuller, and the defendants undertook to show that this was not so, and that he, plaintiff, had not command of the means which he claimed he had, and was not worth as much as he said he was, either before or at the time he purchased the goods.

In the motion for arrest of judgmant, defendants claim that the court has no jurisdiction of the cause, the plaintiff being the State of Missouri and the defendants citizens of Missouri; but the State sues to the use of William Hays, and William Hays is averred to be a citizen of Kansas, and is the real plaintiff, as will appear by the averments in the declaration.

If the plaintiff be a mere nominal party who sues for the use of a person who is a citizen of another State, the Federal Courts have jurisdiction.

See Barron vs. Strobe, 5 Cranch 303.

Irvine vs. Lowry, 14 Peters 293.

McNutt vs. Bland, 2 Howard p. 1.

The last named case of McNutt, Government vs. Bland, is directly in point.

SHARP & BROADHEAD,

Attorneys for Defendant in Error.

Supreme Court of the United States.

No. 83.

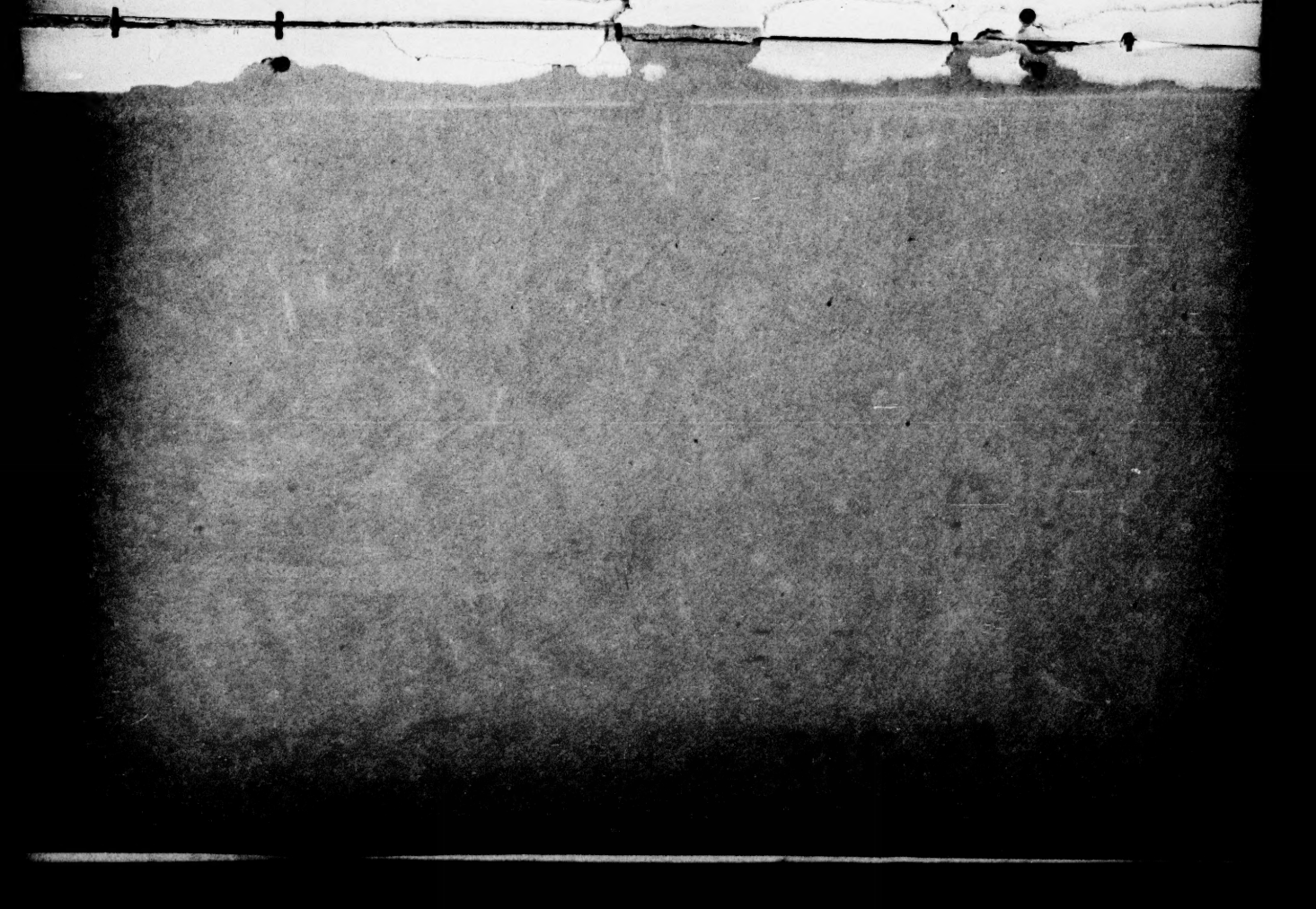
GEORGE H. REA AND EDWARD D. JONES,
PLAINTIFFS IN ERROR,

against

THE STATE OF MISSOURI EX RELATIONE, AND TO THE USE OF WILLIAM HAYES,
DEFENDANTS IN ERROR.

Statement and Brief for Plaintiffs in Error.

New-York:
JOHN W. AMERMAN, LAW PRINTER,
No. 47 CEDAR STREET.
1873.



U. S. Supreme Court.

GEORGE H. REA and EDWARD D. JONES, Plaintiffs in Error, *vs.* THE STATE OF MISSOURI *ex rel.* and to the use of WILLIAM HAYES, Defendants in Error.	*No.* 83. *Brief, &c., for the Plaintiffs in Error.*

AN ABSTRACT OR STATEMENT OF THE CASE.

The defendants in error, the State of Missouri, "in the relation and to the use of" William Hayes, a citizen of Kansas, sued the plaintiffs in error, George H. Rea and Edward D. Jones, citizens of Missouri, in the Circuit Court of the United States for the Districts of Missouri, in an action of debt upon a bond for $50,000. 1

The First National Bank of Washington had, in September, 1869, brought an action in St. Louis against Perry Fuller to recover something over $10,000, and had sued out an attachment, under which the Sheriff had taken certain goods as the property of Perry Fuller. William Hayes claimed these goods and filed a written claim therefor, and thereupon the bank, with Rea and Jones as sureties, 2

executed a bond to the State of Missouri, conditioned that the bank should indemnify the Sheriff against the seizure of the goods, and should also pay and satisfy William Hayes, and any person claiming title to the property, all damages which they should sustain in
3 consequence of such seizure and sale.

The Sheriff sold the goods under the attachment, and thereupon an action was brought in the name of "The State of Missouri in the relation and to the use of" William Hayes against the sureties in the bond, George H. Rea and Edward D. Jones.

Record, pages 1, 2 and 3.

The whole merits of the case were involved in the question, whether Perry Fuller owned or had any interest, by way of a secret trust or otherwise, in the
4 goods, or whether they belonged exclusively to William Hayes.

The case was tried at St. Louis in October, 1871, beginning on the 2d and ending on the 7th, and the plaintiffs had a verdict for $23,127 27.

Record, pages 16 to 18.

Motions for a new trial and in arrest of judgment were made and overruled; a bill of exceptions was sealed and filed, a judgment entered, and a writ of error allowed, which brought the case to this court.

5 Record, pages 18, 22, 23 and 314.

The plaintiffs called William Hayes himself as a witness, who testified in chief that he bought the goods in question from Buckley, Sheldon & Co. and others, and that no one was interested with him in the purchase.

Record, page 26.

Upon cross-examination, Hayes proved that he bought the goods in New-York in August, 1869.

That at that time he held a full power of attorney from Perry Fuller, given to him in April, 1868. 6

Record, pages 27 and 28.

That he was in New-York at the time the goods were bought; called there to assist in a settlement which Perry Fuller & Co. had with Stettor & Co., and which occupied the witness a good portion of the summer.

Record, page 27.

That he did not go from his residence, near Rochester, New-York, to the City of New-York, on the first occasion, until called by Perry Fuller. 7

This was in May.

That he had, then, no idea of buying goods.

Record, page 29.

While so acting as attorney for Fuller, and while negotiating this settlement, and in the month immediately before the purchase of the goods, Hayes began a suit against Fuller in New-York, and took out an attachment against his property.

Record, pages 30, 221.

He first went to Fuller's own attorney to have this done, and this attorney was Mr. Nelson, who, at the time of the trial, was the son-in-law of Fuller. 8

Record, page 31.

Hayes then swore that Fuller, at this time, owed him for borrowed money, represented by certificates of deposit issued by Perry Fuller & Co., $19,630 00.

That on the 1st of May, 1869, he made a settlement with Alexander McDonald, the partner of Fuller, of these certificates, and took Memphis and White
9 River Packet Company stock, $12,160 76, and that there then remained due him $6,030 84, and further swore that he was then assured that the steamboat stock should realize him the value he took it at.

Record, pages 31 to 34.

This stock was afterwards deposited with Buckley, Sheldon & Co., on the purchase of the goods in question.

Record, page 34.

The suit of Hayes *vs.* Fuller was brought for
10 $23,000, which was $5,000 more than the steamboat stock and the $6,030 84.

Record, pages 36, 37.

Hayes further testified, on cross-examination, that he paid Buckley, Sheldon & Co. some money, and gave them some notes which he had from Perry, Fuller & Co., together about $2,500.

Record, pages 45, 46.

That he became acquainted with Fuller in the Indian Department, at Washington, in 1861; that he
11 went to Lawrence, in Kansas, in May, 1865, as Chief Clerk of Mr. Sells, the Superintendent of Indian Affairs, with a salary of about $1,500; that he had

a family, a wife and daughter. At this time he says he was worth not far from forty-five hundred to five thousand dollars.

Record, pages 52, 53.

That he was in the employment of Sells about eighteen months, to October, 1866; that he left Kansas in December, 1866; that all the certificates of deposit from Perry Fuller were given to him before 12
the 1st of September, 1866, except one for $2,750, which was given to him in New-York on December 27, 1866.

Record, pages 53, 54.

He then swears that when he left Kansas he was worth $45,000; so that if his testimony were true, in 18 or 20 months, having a salary of $1,500, he had made and saved over $40,000.

Record, page 56.

He was then further cross-examined, with a view 13
to show how he got this money, and he said that one Isaac Cabman, (Coleman,) an agent for the Choctaw and other Indians, gave him $3,200 for keeping his accounts for two years, which agent had only a salary of $1,500 a year.

That he received from James Dunn for a similar service sixteen hundred or eighteen hundred dollars.

Record, pages 56–59.

Coleman was dead, but Dunn was afterwards called
as a witness, and swore that he paid Hayes in 1865 14

and 1866, not to exceed five or six hundred dollars in all.

Record, pages 273, 274.

The counsel for the defendants was then proceeding to inquire as to how Hayes became possessed of the rest of the $45,000, when the witness replied, "I don't know whether I am to be handled in this way or not." And after some remarks by the counsel for the plaintiffs, the court said, in substance, the
15 witness states in general terms that he had about $5,000 when he went to Kansas, and he accounts for nine or ten thousand more; but there is a large margin between that and $45,000. Now it may be true, of course, that he may have bought the goods in question without having any $45,000; he may have bought them on credit. It may be true that he had $45,000, and it may be true that it was acquired in a way that he does not like to disclose, and yet he may have had it; but it is very true that they have
16 a right to show that since he had claimed to have forty or fifty thousand dollars property of his own at the time he made the purchase of these goods, they may show, if they can, by cross-examination, that he did not have any such amount, to raise the presumption that the purchase was colorable in his name.

That while it is difficult to define any limit to the cross-examination, there must be some limit, and the witness may answer if he chooses, or may decline if he chooses, to answer how he made the other money.
17 The counsel for defendants have a right to ask it, and if he don't see fit to answer it, he may say so.

And thereupon the counsel for the defendants asked:

Q. Do you decline to answer as to how you made the balance of that money?

And the witness answered:

A. No, sir; I have not declined to answer.
Q. State how you made it then.

To which the witness at length answered, in substance, that he had an arrangement with a third person to whom he furnished money, which he used in buying up Government vouchers. This person had been connected with the service and knew the details of the business, and the witness did not, and they shared, share and share alike, in the profit. 18

He stated that he furnished this person money at different times, sometimes three or four thousand dollars, and from that to sixty-five hundred, at a time.

That the witness did not use the Government money for this. 19

The witness was then asked:

Q. To whom did you loan this money to buy Indian vouchers?
A. To a friend of mine.
Q. Who was it?
A. If the court requires I shall tell the name—not without.
Q. You decline to answer?
A. If the court requires it, I will do it. 20

The Court. If there is some reason he does not wish to disclose the name, the court will not oblige him to do it.

Mr. Henderson, (counsel for defendants.) This witness might answer the questions—they are very short.

The Court. He may have personal reasons that he does not choose to name the parties; if so, I won't press him.

Mr. Broadhead, (counsel for plaintiffs.) Suppose
21 the man was an officer of the Government, and made himself criminally liable?

Mr. Henderson. Then let him state it.

The Court. If there are personal reasons that the witness does not choose to answer, he need not state it.

Witness. I prefer not to give it.

And thereupon an exception was noted.

Record, pages 59, 60 and 61.

The witness then testified, in substance, that he
22 made several thousands of dollars in this buying of vouchers.

Record, page 61.

Hayes then further testified to the payment of other sums to him by Perry Fuller & Co., amounting in the aggregate to a good many thousand dollars, and then further testified that Perry Fuller & Co. credited him with no less a sum than $25,000 for certain services in keeping their cotton accounts, and in travelling over the Indian country.

23 Record, pages 62 to 71.

On page 66 of the Record he speaks of this service as his "going through the Indian country assisting them (Perry Fuller & Co.) in distributing their

supplies; "and on pages 68 and 69, he speaks of this $25,000 as commissions, and that such commissions were allowed him by Perry Fuller & Co. for services rendered during the same period he was employed in Kansas under Mr. Sells, the Indian Superintendent, which was from May, 1865, to October, 1866. 24

See Record, pages 65, 66, 68, 69 and 53.

That this story was all a fiction, was shown by the testimony of Perry Fuller, whose deposition was introduced by the plaintiffs on the trial. He said, on cross-examination, "Our firm had nothing to do with Hayes, as the clerk of Sells, to my knowledge. No arrangement was made with Hayes by our firm, by which Hayes was to receive any commission on any goods furnished by us to Sells for his Superintendency. Received no knowledge of any such 25
arrangement from my copartner. Mr. Hayes kept his account with us in preference to keeping it at the bank at that time. If we had been indebted to him in the sum of $20,000 or $30,000, I would have known it. I would have known it if we had owed him $5,000. I was only there from June to October. I don't know how much money we owed him. To my knowledge he had no means of making money aside from his salary. I was intimate with him while I
was here at Lawrence. I first employed Hayes after 26
he returned from Kansas; I think it was in 1867. He was employed as assistant book-keeper, and we sent him wherever it was necessary to have business attended to. His salary was $250 per month and his expenses, when traveling. This is my recollec-

tion. He remained at that salary about eighteen months in all.

Record, page 285.

It will also be observed that this evidence, by the
27 chief member of the firm, which Hayes had sworn owed him over $19,000 from the time he left Kansas to the time the attachment was issued by him in New-York, is almost conclusive to show that Hayes' story on that subject also was manufactured.

Nor was any witness produced who in the least supported Hayes on either of these points. Even McDonald, who made the settlement when the steamboat stock was given to Hayes, said, in substance, that he knew nothing of the alleged debt from his
28 firm to Hayes, and on page 289 of the record he said: "Mr. Hayes, on his return from New-Orleans, as I supposed, came to me and threatened me with suit upon some old matters of Perry Fuller & Co. I asked him to show me what they were. After going to New-York, I don't know whether he went to New-York or not; but after two or three days he called on me again and showed me what purported to be certificates of deposit of the firm of Perry Fuller & Co., and I recognised them as such, and I
29 told him I was astonished at the amount that I appeared to owe him; that in all the statements that had been made before of the indebtedness of the firm, I had not noticed any such amount as that as being due to him, except through Mr. De Wolf, but as they appeared to be the paper of the firm, that I had certain assets of the firm of Perry Fuller & Co. in my hands, and that if he saw fit to take them that

I would settle, so far as those assets would go, and no further."

See Record, pages 288, 289 and 290. 30

Observe further, that the certificates of deposit upon which the alleged indebtedness to Hayes rests are produced to McDonald not until May, 1869, long after Fuller's pecuniary troubles began, and but two months before the goods in question were bought.

The question naturally presents itself why, if the debt was real, Hayes let it lie from the last of 1866, when he left Kansas, to May, 1869, and also whether it may not have been deemed convenient at this time, viz., in May, 1869, to make it appear that Hayes had 31 property, with a view to the transactions which are now in question, which occurred in August, only three months after.

Record, pages 31 to 34, 53 and 54.

Hayes also testified that Perry Fuller was appointed Revenue Collector at New-Orleans, in the fall of 1868, and that he, Hayes, was one of the appraisers under Fuller, at a salary of $1,800 a year.

Record, page 67.

That he bought the goods in question for Ottawa, 32 Kansas, a place to which it is doubtful if he had ever been, and he certainly had never been there but once, and then for only a part of a day.

Record, page 71.

That when the goods were attached, Hayes went to St. Louis and saw Perry Fuller there, and also his

son, Edward Fuller, who lived in Ottawa, and who was the partner of his father, (Record, pp. 125 and 126,) and Fuller then aided and assisted in trying to
33 get security to release the goods.

Record, pages 71 and 72.

But although Hayes had never been to Ottawa, except as above, Perry Fuller had had a business there.

Buckley's testimony, Record, page 137.

John P. Rice, one of the sellers of the goods, was examined before the trial, and on the trial his deposition was read. From that it appears that he testified in chief, under the objection of the defend-
34 ants below, that his firm asked Hayes how much means he had, and he replied that his means amounted to about $40,000.

Record, page 77.

In like manner, George W. Bassett was examined before the trial, and was permitted to say, also under the objection of the defendants, that Hayes told him he was worth forty or fifty thousand dollars—about $50,000 he thought.

Record, page 90.

35 Various witnesses, sellers of the goods, were examined on both sides, who proved that Hayes and Fuller were together when the greater part of the goods was bought. That Fuller in some cases introduced Hayes to the sellers, and aided and advised in their selection, and that in almost every case he

endorsed the notes of Hayes which were given for the goods.

Record, pages 78 to 80, and 85.
Record, pages 95, 96 and 100.
Record, pages 129, 130.
Record, page 144. 36
Record, pages 148, 149, 152.
Record, pages 154, 155.

It appears by the testimony of Buckley that Hayes went with Perry Fuller to Washington and also to New-Orleans, and that he never had any employment except with Fuller and the business now in question, and his employment in the Interior Department in Washington, and that under Fuller in the Custom House at New-Orleans.

Record, pages 135, 136. 37

It appeared by uncontradicted evidence that Hayes gave to Buckley, Sheldon & Co., the principal sellers of the goods, as collateral for the sale, the steamboat stock.

Record, pages 34 and 91.

Also a mortgage on some property in Lawrence.

Record, pages 39 and 44.

And also money and notes, about $2,500.

Record, pages 45 and 46.

That all of these collaterals, viz., the steamboat 38
stock, the mortgage on the Lawrence property, and the notes, came from Perry Fuller.

Record, pages 33 and 34–39, 44 and 46.

Besides this, when Buckley pressed Hayes for the cash part of his purchase, Hayes procured and gave to him a letter from Mrs. Perry Fuller, which authorized him to retain $10,900, expected to be received upon a note received from Stettauer in settlement of the claim against him, and Buckley so re-
39 ceived the money.

Record, pages 132, 133 and 142.

It also appeared by uncontradicted evidence that nearly all the fortune (about $45,000) which he claimed to be worth, came in some way from Perry Fuller, namely, the steamboat stock, the Lawrence mortgage, and the notes deposited as collateral, and also sundry considerable sums, amounting in the aggregate to a good many thousand dollars, and the sum of $25,000 for certain services in keeping their
40 cotton accounts, and in travelling over the Indian country.

Record, pages 62 to 71.

The witness, Clifton Hellen, swore that Hayes told him in New-York, in the summer of 1869, which was the time the goods were bought, that Perry Fuller was buying goods, and was then hard pressed for money; that Fuller then came and sat down by them and repeated much the same thing.

Record, page 161.

41 James A. Whalen, a witness, who was on such terms with both Hayes and Fuller, that he joined Hayes on August 19, 1869, in signing a bond to discharge an attachment taken out by the Bank of Cherry Valley against Fuller, swore that Hayes told

him that he had gone into business with Perry Fuller, and that they were buying a large amount of goods in New-York, and were going to take them out West to Kansas, and said they expected to make a great deal of money.

Record, pages 215, 216. 42

Samuel R. Sylvester testified that Hayes told him in Washington in February, 1869, that he had made or was about to make, large purchases of goods for Fuller; that he was Perry Fuller's agent—his right bower, his right hand man.

Record, pages 222, 223.

John F. Coyle testified that he saw Hayes in New-York on the 27th of August, 1869, who told him that Fuller was engaged in buying goods, and had employed all the money he received from Stettauer 43 for that purpose.

Record, pages 243, 244.

Waddy Thompson testified, that in the summer of 1869 he had a conversation with Fuller and Hayes, together, in New-York; that Fuller said that he and Hayes were going into the dry goods business in Kansas—in Ottawa, I think; that he also then said that he (Fuller) was using some property—some steamboat stock, as collateral in the purchase of the goods. 44

Record, pages 264 to 266.

The defendants also gave in evidence the records of four judgments against Perry Fuller in New-York, the summonses in which were dated August 2, 1867;

March 4, 1868; April 17, 1868, and July 30, 1869. These judgments were entered in 1868, 1869 and 1870.

Record, pages 189 to 207.

In one of these, as already appears, the case of the
45 Bank of Cherry Valley against Fuller, Hayes signed the bond to discharge the attachment on August 19, 1869, at the very time these goods were being bought.

Record, pages 215 and 219.

To repeat. At the very time Hayes held the power of attorney of Fuller, and was engaged in negotiations for him in New-York for the settlement of the Stettauer matter, and was otherwise his agent and friend, he sued him, applying first for that purpose to Fuller's own lawyer, and issued an attachment
46 against his property in the City of New-York.

Record, pages 30, 31 and 221.

The witness, Fant, testified, without objection, that Fuller told him in Washington, that he had got Hayes to place this attachment upon Stettauer, and that it could be relieved when the settlement they were then negotiating was concluded.

Record, page 259.

The testimony being closed, the Hon. John F. Dillon charged the jury substantially as follows:
47 That this was a controversy between the plaintiff, Hayes, and the First National Bank of Washington, as to the right of the Bank to attach the goods in question as the property of Perry Fuller.

The issue in this case is simply this: Was Hayes

the sole owner of the goods levied upon by the Bank as Fuller's, which is the plaintiff's claim, or was Fuller the sole owner, or if not the sole owner, had he a joint interest in them as a secret co-partner of Hayes, or otherwise, which is the defendants' theory. 48

Now, if you find from the evidence that Hayes was the sole owner of the goods, and that Fuller had no interest or right of property therein, then the Bank had no right to levy its attachment upon them, and the defendants are liable to the plaintiffs for their damages.

But if you find that Fuller owned the property attached, or was a co-partner, though a secret co-partner with Hayes in respect to said goods, or had a joint interest in them, then in either case the Bank 49 had a right to attach the goods, and the defendants are not liable in this action; and in this action are not liable although Hayes, as between himself and Fuller, may have had a joint interest, with Fuller, in the goods.

After stating that the goods were purchased in New-York in the name of and billed to Hayes, and that *prima facie*, therefore, the goods would be Hayes', the learned judge added:

But the Bank claims that, although the goods 50 were thus purchased ostensibly or apparently in the name of Hayes, yet that it was in pursuance of a secret agreement or understanding between Hayes and Fuller, to the effect that Hayes should buy, in his own name, but for Fuller's benefit and use, or for the joint use and benefit of Hayes and Fuller, and that the motive or inducement for this arrangement or understanding was that Fuller was in embarrassed

circumstances, or was apprehensive of trouble if his
51 name was known in the purchase. In other words, the Bank claims that there was a fraudulent scheme between Fuller and Hayes, by which goods were to be purchased in Hayes' name, but in secret trust for the use and benefit of Fuller wholly or in part.

The learned judge then told the jury that the alleged fraudulent scheme might be established by circumstances; that it was not necessary to establish it by express or positive testimony; and after other pertinent remarks not now material to be stated, the
52 case was submitted.

Pp. 309, 310.

The jury failed to agree, and returned into Court, (the next morning,) when they were again charged by the Hon. Samuel Treat as follows:

"If the property in question was bought and shipped solely in the name of Hayes, then the jury should find the ownership to be exclusively his, unless the defendants have proved that notwithstanding such purchase and shipment, the fact really
53 is that the ostensible and apparent ownership of Hayes was to cover up and conceal a *proprietary* interest of Fuller in the goods. In other words, the possession of the goods by Hayes, the same having been bought and shipped solely in his name, throws upon the defendants the burthen of proving that Fuller had a *property* interest therein, or was part owner thereof.

"The defendants, in proving a secret or other agreement or understanding between Hayes and Fuller *as to*

ownership of these goods, must first establish that fact 54
by competent evidence, independent of any declarations or statements by Fuller in the absence of Hayes. In order to prove such understanding, the defendants cannot resort to such declarations or statements by Fuller; hence, discarding from your minds on that branch of the inquiry all statements made by Fuller in the absence of Hayes, you should first determine whether such an understanding existed. If it did not exist, or is not proved by testimony independent of such statements by Fuller, then 55
the jury cannot consider such statements by Fuller as any evidence whatever in this case.

"If satisfied by such independent evidence that such an understanding existed, then Fuller's declarations are competent testimony, and not otherwise.

"It is immaterial as to the *ownership of the goods* how Hayes acquired his means, or whether his exhibit of his means was correct or not, if he actually bought the goods solely for himself. The merchants of whom he bought, if the purchase was based on 56
false representations, had their legal redress, but the defendants cannot impair the title on such grounds; that testimony it is proper for the jury to consider in reference to the credibility of Hayes as a witness, and also as tending to show what connection, if any, Hayes had at the time with Fuller, and so with respect to the manner in which he acquired his means or credit.

"If he wronged the Government, or violated his official obligations, or procured an unfair advantage 57
in his settlement with Fuller & Co. or McDonald & Fuller, this is not the case in which he is to be tried for such alleged misconduct. This is a simple

question *as to the ownership of the goods in controversy*, and not as to other or outside questions, and such questions have nothing to do with the merits of this case further than they affect the credibility of witnesses, or throw light upon the alleged understanding between Hayes and Fuller *as to their ownership*
58 *of this property.*"

Page 311.

Several exceptions were taken to this charge, which appear on pages 312, 313.

THE QUESTIONS INVOLVED ARE,

1. The validity of the exception on page 61 of the record.

2. The validity of the exceptions to the charge of the Hon. Samuel Treat, one of the Judges who presided at the trial.

3. The question whether the Circuit Court of Mis-
59 souri had jurisdiction of this case in which the State of Missouri were plaintiffs, upon a bond given for the benefit and protection of the Sheriff of St. Louis, as well as for the claimants of the goods, and when the defendants were residents of that State.

The first two arise upon the bill of exceptions; the third arises upon the face of the record and upon the motion in arrest of judgment.

Record, page 21.

ASSIGNMENT OF ERRORS. 60

The errors relied upon by the plaintiffs in error are:

1. The ruling which excused William Hayes, the party in interest, from answering the question to whom he loaned the money to buy Indian vouchers.

Record, page 61.

2. The charge of the Hon. Samuel Treat as a whole and in detail.

The charge was as follows:

"TREAT, *J.*: 61

"If the property in question was bought and shipped solely in the name of Hayes, then the jury should find the ownership to be exclusively his, unless the defendants have proved that, notwithstanding such purchase and shipment, the fact really is, that the ostensible and apparent ownership of Hayes was to cover up and conceal a proprietary interest of Fuller in the goods. In other words, the possession of the goods by Hayes, the same having been bought and shipped solely in his name, throws 62 upon the defendants the burthen of proving that Fuller had a property interest therein, or was part owner thereof.

"The defendants, in proving a secret or other agreement or understanding between Hayes and Fuller as to ownership of these goods, must first

"establish that fact by competent evidence, inde-
"pendent of any declarations or statements by Fuller
"in the absence of Hayes. In order to prove such
63 "understanding, the defendants cannot resort to
"such declarations or statements by Fuller. Hence,
"discarding from your minds on that branch of
"the inquiry, all statements made by Fuller in the
"absence of Hayes, you should first determine
"whether such an understanding existed. If it did
"not exist, or is not proved by testimony independ-
"ent of such statements by Fuller, then the jury can-
"not consider such statements by Fuller as any evi-
"dence whatever in this case.

64 "If satisfied by such independent evidence that
"such an understanding existed, then Fuller's de-
"clarations are competent testimony, and not other-
"wise.

"It is immaterial as to the ownership of the goods,
"how Hayes acquired his means, or whether his ex-
"hibit of his means was correct or not, if he actually
"bought the goods solely for himself. The mer-
"chants of whom he bought, if the purchase was
"based on false representations, had their legal re-
65 "dress; but the defendants cannot impair the title
"on such grounds. That testimony it is proper for
"the jury to consider in reference to the credibility
"of Hayes as a witness, and also as tending to show
"what connection, if any, Hayes had at the time
"with Fuller; and so with respect to the manner in
"which he acquired his means or credit.

"If he wronged the Government, or violated his
"official obligations, or procured an unfair advantage
"in his settlement with Fuller & Co., or McDonald
66 "& Fuller, this is not the case in which he is to be

" tried for such alleged misconduct. This is a simple " question as to the ownership of the goods in con- " troversy, and not as to other or outside questions, " and such questions have nothing to do with the " merits of this case further than they affect the " credibility of witnesses, or throw light upon the " alleged understanding between Hayes and Fuller " as to their ownership of this property."

The exceptions taken to the charge, and which are relied upon, were : 67

To the whole charge, and also to that portion thereof which said :

" It is immaterial as to the ownership of the goods " how Hayes acquired his means, or whether his ex- " hibit of his means was correct or not, if he actually " bought the goods solely for himself. The merchants " of whom he bought, if the purchase was based on " false representations, had their legal redress, but " the defendants cannot impair the title on such " grounds." 68

To the further portion thereof, as follows :

" If the property in question was bought and " shipped solely in the name of Hayes, then the jury " should find the ownership to be exclusively his, " unless the defendants have proved that notwith- " standing such purchase and shipment, the fact " really is that the ostensible and apparent ownership " of Hayes was to cover up and conceal a pro- " prietary interest of Fuller in the goods. In other

69 " words, the possession of the goods by Hayes, the
" same having been bought and shipped solely in his
" name, throws upon the defendants the burthen of
" proving that Fuller had a property interest therein,
" or was part owner thereof."

To the further portion thereof, as follows:

" The defendants, in proving a secret or other
" agreement or understanding between Hayes and
" Fuller as to ownership of these goods, must
" first establish that fact by competent evidence, in-
70 " dependent of any declarations or statements by
" Fuller in the absence of Hayes "

To the further portion thereof, as follows:

" In order to prove such understanding, the de-
" fendants cannot resort to such declarations or state-
" ments by Fuller. Hence, discarding from your
" minds on that branch of inquiry all statements
" made by Fuller in the absence of Hayes, you
" should first determine whether such an understand-
" ing existed. If it did not exist, or is not proved
71 " by testimony independent of such statements by
" Fuller, then the jury cannot consider such state-
" ments by Fuller as any evidence whatever in this
" case. If satisfied by such independent evidence
" that such an understanding existed, then Fuller's
" declarations are competent testimony, and not
" otherwise."

And to the further portion thereof, as follows:

" If he wronged the Government, or violated his

" official obligations, or procured an unfair advantage
" in his settlement with Fuller & Co., or McDonald 72
" & Fuller, this is not the case in which he is to be tried
" for such alleged misconduct. This is a simple
" question as to the ownership of the goods in con-
" troversy, and not as to other or outside questions,
" and such questions have nothing to do with the
" merits of this case, further than they affect the
" credibility of witnesses, or throw light upon the
" alleged understanding between Hayes and Fuller
" as to their ownership of the property."

Record, pages 311 to 313. 73

3. The overruling the motion in arrest of judgment.

Record, page 21.

BRIEF OF ARGUMENT.

Point I.

It was error to excuse the party in interest, William Hayes, when called as a witness on his own behalf, and while under cross-examination, from answering to whom he loaned the money to buy Indian vouchers.

Record, page 61. 74

First.—The real question on trial was whether Hayes and Fuller were engaged in a scheme to defraud the creditors of Fuller, by covering up his property, or, in other language, whether a secret

trust, fraudulent as against creditors, existed in favor of Fuller in these goods bought in the name of Hayes.

The case, as presented to the court and jury upon undisputed evidence, had all the more marked
75 features of a transaction to "hinder, delay and defraud creditors," viz.:

1. Fuller, who had been engaged in large business, (Record, pages 278 and 302,) was now in pecuniary trouble, having both suits and judgments against him, (Record, pages 189 to 207, and fol. 44 above,) and it seems he was also in fear of some proceeding by the Government, growing out of his Collectorship at New-Orleans. (Record, pages 68, 295 and 284.)

76 2. Hayes had been a mere clerk in the Indian Department at Washington, and went to Kansas in May, 1865, as chief clerk to Mr. Sells, a Superintendent of Indian affairs, at a salary of $1,500. He remained in Sells' employment eighteen months, to October, 1866, and left Kansas in December of that year. Afterwards, in 1867, he was assistant book-keeper to Perry Fuller & Co., at a salary of $250 a month and his travelling expenses.

Record, pages 52, 53 and 285.
77 Folios 11 and 26.

Hayes and Fuller had become acquainted at Washington in 1861, while Hayes was in the Indian Department there, and during the 18 to 20 months that Hayes was in Kansas, he had, upon his

own evidence, some intimate connection with Fuller. Fuller says that they were intimate there.

Record, pages 62 to 71, 285.
Folios 26 and 39.

And when, in the fall of 1868, Fuller was appointed Collector at New-Orleans, Hayes went with him as 78
appraiser, with a salary of $1,800.

Record, page 67.
Folio 31.

In addition to this, and further to show Hayes' dependence upon Fuller, Buckley swears that Hayes went with Fuller to Washington and New-Orleans, and that Hayes never had any employment but with Fuller, except the business in question and his employment in the Interior Department, and that under Fuller in New-Orleans. 79

Record, pages 135, 136.
Folio 36.
See, also, Fuller's statement of Hayes' employment and position with him.
Record, page 285.

From 1868 to the time of the purchase of the goods, Hayes held the full power of attorney of Fuller.

Record, pages 27 and 28.
Folio 6. 80

During the whole summer of 1869, the goods being bought in August, Hayes was back and forth to New-York from his residence near Rochester,

upon the call of Perry Fuller, engaged in an important negotiation for Fuller with Stettor & Co.

And when he went first to New-York, he had no idea of buying goods.

Record, pages 27 to 29.
Folio 7.

81 3. Fuller being in pecuniary trouble, his friend, attorney in fact, and agent, Hayes, in July, shortly before these goods were bought, took out an attachment against his property, applying for that purpose to Fuller's own lawyer, and who was afterwards his son-in-law.

Record, pages 30, 31 and 221.
Folio 7 and 8.

4. Hayes being thus the dependent of Fuller, having his power of attorney, holding himself sub-
82 ject to Fuller's call through the summer of 1869, and in fact engaged for him through the summer in the negotiation with Stettor, and having no idea of buying goods when he went to New-York, we find him in the middle of August buying a large stock for Ottawa, a place to which he was a stranger, but a place where Fuller's son and partner lived, and where Fuller had had a similar business.

Record, pages 71, 72 and 137.
Folios 32, 33.

83 We find him buying these goods upon the introduction and recommendation of Fuller, and with his advice and assistance, and Fuller endorses most of the notes given for the goods—Fuller being the

man against whose property Hayes has just issued an attachment.

Folios 35, 36.

5. In addition to this, we find $10,900, the property of Fuller's wife, given to Buckley, Sheldon & Co. to meet the cash payments to them.

Record, pages 132, 133 and 142. 84
Folios 38 and 39.

6. We find also that the steamboat stock, the Lawrence mortgage, and certain notes given by Hayes to Buckley, Sheldon & Co., all were once the property of Fuller, and came from him to Hayes.

Record, pages 33, 34 and 91, 39 and 44, 45 and 46, and folios 37 and 38.

SECOND.—These being facts undisputed, most of them proved by Hayes himself, and the point in issue being whether the goods were bought in pur- 85
suance of a scheme between Fuller and Hayes to conceal the property of Fuller and so defraud his creditors, and Hayes being under a cross-examination tending and designed to show that it was improbable he would have bought the goods for himself, because he was not a man of sufficient pecuniary means to warrant such a purchase, and he having sworn that he was worth $45,000, it was clearly competent to ask the witness where and from whom he obtained the money, with a view afterwards to 86
contradict him.

The question whether he had the money, or did not have it, was not collateral or irrelevant to the issue whether he bought the goods in pursuance of a

scheme to defraud Fuller's creditors. The inquiry whether Hayes had or had not money — whether he was a clerk upon a salary, or a man of wealth, was evidence which bore upon the issue.

If there had been no issue of fraud in the case,
87 and the question had been simply did Hayes buy the goods, or did Fuller buy them, it may be conceded that it would have been collateral to the issue to inquire of Hayes or Fuller whether they were rich or poor.

But when the issue is not upon the mere fact of purchase, but the fact of purchase by Hayes is conceded, but where the issue lies deeper than that, and is upon the question whether the purchase in fact made by Hayes was in fraud of Fuller's creditors, the
88 question whether Hayes was a clerk at a salary or a man of wealth, is a principal question, and is not collateral or irrelevant.

By way of illustration. Suppose the case to stand just as it did, with all the circumstances before detailed, tending to convince the jury that Hayes was only the instrument of his patron, Fuller; and suppose Hayes, not examined at all, but the defendants upon the trial to call witnesses who knew Hayes and his circumstances, and who should testify that Hayes
89 had been the clerk of Fuller and held his power of attorney, and they should testify that Hayes was a man of no means or responsibility. Is there a doubt that the evidence would be admissible upon the issue that the purchase in Hayes' name was colorable, and was in fraud of Fuller's creditors?

Or again. No doubt, as was said in his charge in this case by the Hon. Judge Dillon, "the law does

not require fraud, which is usually contrived in secret, to be established by express or positive testimony, * * * but it allows it to be established 90
by circumstantial evidence."

Accordingly upon the trial, many circumstances were proved bearing upon this issue.

It was proved that Fuller was sued and had judgments against him; this to afford a motive for the concealment.

It was proved that Hayes was a clerk with a small salary. That he was an acquaintance of Fuller, and that their relations in Kansas were intimate.

That he was Fuller's assistant book-keeper after 91
the return from Kansas in 1867.

That Hayes held Fuller's power of attorney down to the time of the purchase of the goods in question.

That during the summer of 1869 Hayes held himself at his residence near Rochester subject to the call of Fuller, and that upon that call he came to New-York, and was occupied much of the summer for Fuller in the Stettor negotiation.

That occupying such relations to Fuller, Hayes had
in July covered Fuller's property by attachment. 92

That he had not thought of buying goods when he first left home for New-York.

That Fuller introduced Hayes to the sellers of the goods, and advised as to the purchase.

That Fuller endorsed the notes.

That when the goods were attached, Fuller soon appeared at St. Louis, and endeavored to procure the release of the goods.

Not one of these circumstances but was competent
evidence upon the issue of fraud and concealment. 93

They were equally competent whether proved by cross-examination of Hayes, or by any other witness in chief.

They were all principal or direct evidence upon the issue, and it would have been error to exclude any one of them.

In the same manner it was principal or direct evidence upon the issue of fraud and concealment, that Hayes was not a man of such pecuniary means as
94 that he would be likely to buy a large stock of goods with the design to engage in business on his own account. And had the defendants offered upon the trial, evidence in chief that Hayes did not have any money, or did not have the $45,000, it must have been received—it would have been error to reject it. It was one of the train of circumstances tending to prove that Hayes did not buy the goods for himself, but, on the other hand, was the tool of Fuller, and engaged with him in a scheme to defraud his cre-
95 ditors.

We think we have demonstrated that upon the trial of a case where the issue was whether a scheme to defraud creditors and to cover up property existed, it was competent to prove any fact connected with the parties which tended to throw light upon their acts.

It was clearly competent in this view to prove, for instance, that Hayes was the attorney, in fact, of Fuller, and in his employment during the summer of
96 1869, when the goods were bought.

It was equally competent in this view to prove that the pecuniary circumstances of Hayes were not such that he would be likely to buy the goods in

question with the design to engage in business on his own account.

And this proof was equally competent, whether offered in chief or by way of cross-examination.

Now, to apply this to the point in question, Hayes had sworn that he was worth $45,000, and had told where a part of it came from. He had then sworn 97
that he made other of this money by buying, in connection with a third person, certain Indian vouchers. He declined to answer who this third person was; the court excused him and the defendants excepted.

We have demonstrated that it was competent for the defence to prove that Hayes was a man of no responsibility—that he did not have this $45,000—that such evidence was principal or direct evidence upon the issue of fraud, and that it was not collateral or irrelevant. 98

It is the same thing to say that it was competent for the defence, when Hayes had sworn that he had the $45,000, to call witnesses to disprove it. We might call witnesses who knew the fact that he had no such money, or we might accomplish the same end by calling the men from whom he said he got the money, to contradict him, and to swear that they never gave him any such money. Just as the witness, James Dunn, was called to contradict Hayes, and to say that he paid Hayes only five or six hundred dollars, in place of $1,600 or $1,800, as Hayes had sworn. 99

Folio 14, above.

Having then the clear right to prove that Hayes

did not have the $45,000, and to cross-examine for that purpose, we did so, and he said that he got a part of it from this third person, with whom he had speculated in Indian vouchers; we asked the name, and he declined to give it.

100 Now, if he had given the name, it would be competent for the defence to call that person, and to prove by him that no such money was made.

It all rests on the point, that proof that Hayes was not a man of responsibility was principal evidence —was direct evidence upon the issue of fraud.

If it were principal evidence, as is clear, then it was competent to cross-examine him to show that he did not have the money; and when he swore from whom he got it, to contradict him by the person
101 named by him.

But the defence was deprived of the possibility of contradicting him by the ruling of the court, to which the exception was taken. This ruling was error.

To repeat the argument in brief.

1. The issue was fraud against creditors.

2. Upon this issue it was competent to prove as a fact in chief that Hayes was not a man of such means that he was likely to buy the goods for himself—that he did not have the $45,000 that he said
102 he had.

3. To this end it was competent to cross-ex-

amine Hayes to show that he did not have the money; and when he indicated the person or persons from whom he received it, to ask their name, in order to call such person or persons to prove by them that they did not give him the money.

4. It was error to excuse the witness and to deprive the defence of the power of contradicting him upon the point in question.

THIRD.—There are some other considerations that strengthen the position of the plaintiffs in error upon this exception. 103

1. Hayes had sworn that he gave to Buckley, Sheldon & Co. some money, and that he also gave them, as collateral, the Steamboat Company stock, the Lawrence mortgage, and certain notes, all of which collaterals came, as Hayes swore, from Fuller.

Folio 38, above.

If Hayes were a man of no responsibility, the jury had a right to infer that these securities which came from Fuller were still secretly his—held by Hayes, the attorney in fact and agent of Fuller, for his benefit, and in like manner for his benefit pledged on account of the goods. 104

It was, therefore, manifestly competent, in this view, to cross-examine Hayes to show that he never had the money he claimed he had, and when he stated from whom he got it, to call those parties to contradict him and to prove that his statement in that behalf was false. 105

2. Before the trial the plaintiffs below examined the witnesses, John P. Rice and George W. Bassett, and they were allowed to testify, although under the objection of the defendants below, that Hayes represented to them that he was worth $40,000 to $50,000.

Folios 33 and 34, above.

We are clear that this evidence was not admissible, but it certainly does not lie with the defendants in
106 error to say so. It was offered by them, and read, and certainly it was then competent for the defendants below to disprove the truth of the statements, and to that end to cross-examine Hayes, and to contradict him when he should have stated from what sources he derived the money.

FOURTH.—It being demonstrated that the evidence which the defendants were laying the foundation for, by the cross-examination, was principal or direct evidence, and was not collateral or irrevelant to the
107 issue, the court below had no right to excuse the witness from answering.

1. It is no doubt true, that when a witness is under cross-examination, and the object of counsel is merely to test his accuracy, or his memory, or to impeach him by an exposure of his transactions outside of the case on trial, the whole control of the cross-examination rests with the judge who presides; he may restrict the counsel, or he may throw the door wide open. The only limits are that the witness
108 shall not be required to give evidence tending to prove himself guilty of a crime, and that he shall not

be required to expose himself to a penalty or forfeiture.

Great Western Turnpike Co. *vs.* Loomis, 32 *N. Y.* 127.

Henry *vs.* Bank of Salina, 1 *Comstock*, 83.

1 *Greenleaf's Ev.*, §§ 449, 450.

2. But when the evidence in question is principal evidence, and is not collateral or irrelevant to the issue, the witness will not be excused from answering, even if it appear that the answer will tend to degrade him. 109

1 *Greenleaf's Ev.*, § 454.

2 *Phil. Ev.*, 939, (Ed. of 1859 ;) also note 593.

Swift's Ev. 80, 81.

The People *vs.* Abbot, 19 *Wend.* 192–195.

Great Western T. Co., *vs.* Loomis, 32 *N. Y.* 127, 137.

The People *vs.* Lohman, 2 *Barb.* (*N. Y.*) 216, 224–5. 110

Lohman *vs.* The People, 1 *Com.* 379–385.

In Re Lewis, 39 *How. P. R.* 155.

Hill *vs.* State, 4 *Ind.* 112.

Clementine *vs.* State, 14 *Missouri*, 112.

Weldon *vs.* Burch, 12 *Ill.* 374.

State *vs.* Douglass, 1 *Missouri*, 527.

Ward *vs.* State, 2 *Missouri*, 120.

Grim *vs.* The Commonwealth, (Ky.,) 5 *Litt. R.* 300. 111

Clark *vs.* Reese, 35 *Cal.* 89.

3. It was not even made to appear in this case by the declaration of the witness, nor by the facts as they

were disclosed, that the answer to the question would tend to degrade the witness; the most that the answer would have done would have been to show that a third person who had been connected with the service of the Indian Department, but who was not so now, had used money which Hayes says he ad-
112 vanced, expressly saying that it was not money of the Government, in the purchase of Indian vouchers on their joint account.

Record, pages 60–61.
See 1 *Greenleaf's Ev.* 456.
Forbes *vs.* Willard, 54 *Barb.* 520.
Fellows *vs.* Wilson, 31 *Barb.* 163.

The witness was excused, because he had "personal reasons" for not answering.

Certainly the facts of this case brought it within
113 no known rule upon which a witness can be excused.

4. It is settled also that a witness, and so certainly a party in interest, offering himself to testify, and having voluntarily, or without objection, testified to a part of a transaction in such manner as favorably to affect the case of one side, cannot afterwards object to tell the remainder of the story, when such remainder might afford an explanation or an answer to that which he had already told. The witness or
114 party cannot, under such circumstances, shelter himself behind the objection that the answer or explanation sought will tend to degrade him. Indeed, the rule goes even further than this, and holds that the witness or party having told a part of the story, must

tell the whole, even though it will tend to convict him of a crime.

Roberts *vs.* Garen, 1 *Scam.* (*Ill.*) 396.
Pitcher *vs.* The People, 16 *Mich.* 142.
Woburn *vs.* Henshaw, 101 *Mass.* 193.
Crittenden *vs.* Strother, 2 *Cr. C. C.* 464. 115
Chamberlain *vs.* Wilson, 12 *Vermont*, 491.
State *vs.* K———, 4 *N. H.* 562.
Foster *vs.* Pierce, 11 *Cush.* 437.
Commonwealth *vs.* Price, 10 *Gray*, 472, 476.
McGarry *vs.* The People, 2 *Lansing*, 227.
Low *vs.* Mitchell, 18 *Maine*, 374.
Coburn *vs.* Odell, 10 *Foster*, *N. H.* 540.

In this case, Hayes being asked if he declined to answer how he made the balance of that money, (meaning the $45,000,) answered, "No, sir; I havn't 116
declined to answer," (Record, page 60,) and he then went on to give an account of his advance of money, and speculation in Indian vouchers, stating that there was a profit in the business, which he afterwards said amounted to several thousand dollars.

Record, pages 60, 61.

But when asked the name of the person with whom he speculated, and who might have contradicted him, sheltered himself under the privilege.

5. A witness will not be excused from answering, 117
because his answer will expose him to a civil suit.

1 *Greenleaf's Ev.* § 452, and cases cited.

FIFTH.—It was error to so excuse the witness from answering.

Cloyes *vs.* Thayer, 3 *Hill*, 564.

SIXTH.—Upon a bill of exceptions the court will presume that the error injured the plaintiff in error.

Church *vs.* Hubbart, 2 *Cranch*, 187–239.
Smith *vs.* Carrington, 4 *Cranch*, 62–70.

118 If, however, they will look into this case for this purpose, it is very clear that the plaintiffs in error were injured by the ruling in question.

There was really no evidence in favor of the plaintiffs below, but the conceded fact that Hayes bought the goods in his own name, and what he says about his pecuniary ability—and as to the latter, there is not a witness to sustain him. McDonald does not, and what Fuller says tends to disprove his statements.

See fols. 24 to 30, above.

119 If, then, we could have added to our other proof, which tended to show that Hayes had not the $45,000 claimed by him, a contradiction of his statement that he had made some thousands of dollars in the purchase of Indian vouchers, it is fair to presume that the scale would have been turned in favor of the defendants below.

Point II.

There was error in the charge of Judge Treat, the
120 second charge given to the jury.

First. Judge Dillon had upon the close of the evidence delivered a charge to the jury, to which neither party took exception, and by which he had,

in substance, left to the jury the real question in the case, namely, whether the goods, bought by Hayes in his own name, were bought upon some secret trust for the benefit of Fuller.

See folios 47 and 52, above, and especially folios 50 and 51.

Second.—But when the jury returned into court, after, as is understood, an absence through the night, 121
Judge Treat charged the jury in such manner as was calculated to lead the jury to throw out of account every consideration but the one, who bought the goods, and to give no weight to the facts, which tended to prove that there was a secret trust for Fuller.

The words "*ownership of the goods*," "*proprietary interest*," "*property interest*," and like words, occur seven times in the five paragraphs of this charge.

While, if there were a secret trust for Fuller, the 122
legal title was in Hayes, and no *property in Fuller*—no *proprietary interest*—no *property interest*—he was not *part owner*—and yet the jury were told, in substance, that unless there were this *proprietary interest*, *property interest* or *part ownership*, the defendants must fail.

See 1st paragraph, Judge Treat's charge, folios, 52, 53.

Third.—The contrast to the charge before given must have struck the jury unfavorably to the de- 123
fendants, and injured them.

Fourth.—The charge gave an unusual and a prejudicial prominence to the consideration that if Hayes

wronged the Government, or violated his official obligations, or procured an unfair advantage in his settlement with Fuller & Co., or McDonald & Fuller, this was not the case in which he was to be tried for such alleged misconduct, especially when the learned judge added, "this is a simple question as to the
124 *ownership of the goods in controversy*, and not as to other or outside questions."

This was almost like directing a verdict for the plaintiffs; nor could that which followed have disabused the minds of the jury of the impression which they undoubtedly received, that they were to try simply the question of *ownership of the goods in controversy*. The learned judge added, "and such questions have nothing to do with the merits of this case further than they affect the credibility of witnesses,
125 or throw light upon the alleged understanding between Hayes and Fuller *as to their ownership of this property*."

This qualification still left the jury in possession of the idea already so much impressed upon them, that the question before them was simply "as to the *ownership of this property*;" while the real point of the case, the existence of the secret trust in favor of Fuller, was entirely overlooked and disregarded. This was error.

126 See folio 57, and the exceptions on pages 312 and 313 of the Record.

Besides this, the charge of Judge Treat left out of view the consideration that the jury should consider the fact whether Hayes had the means to buy these goods and undertake this business, and that if he had

not, the jury might properly infer that the business was Fuller's, and Hayes his secret agent.

Point III.

The Circuit Court of Missouri had no jurisdiction of this case. 127

FIRST.—The bond on which this action was brought was conditioned as follows: Now, if the aforesaid plaintiff shall indemnify said John McNeil, Sheriff, against all damages and costs which he may sustain in consequence of the seizure and sale of the property in question, and moreover shall pay to and satisfy said claimant, (William Hayes,) and any person or persons claiming title to said property, all damages, &c., then this obligation shall be null and void. 128

Record, pages 13 and 14.

It is true that the declaration avers that William Hayes is a citizen of the State of Kansas, but it does not show of what State the Sheriff, who is also named in the bond, is a citizen.

Now, although the action was brought "*ex relatione*, and to the use of William Hayes," it is nevertheless, we think, a suit for the interest of whom it may concern.

Nor is there any thing that prevents William Hayes from now suing the Sheriff; and, should he do so and collect damages from him, it seems clear to us 129

that the money to be collected in this case would be, in the hands of the plaintiffs, the State of Missouri, a fund for the benefit of the Sheriff.

Livingston *vs.* Bishop, 1 *Johns.* 290.
Matthews *vs.* Menedger, 2 *McLean*, 145.
Osterhout *vs.* Roberts, 8 *Cow.* 43.

Under these circumstances, we claim that it was
130 necessary, in order to give the Circuit Court of the United States jurisdiction that not only William Hayes, but every other person who had an interest in the bond, should be a citizen of some other State than the State of Missouri, of which the defendants were citizens.

Point IV.

The judgment should be reversed.

New-York, October, 1873.

AUG. F. SMITH,

131 *Advocate.*